Neutral Citation Number: [2021] EWHC 3251 (Admin)

Case No: CO/3660/2021

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

Royal Courts of Justice
Strand, London, WC2A 2LL

1st December 2021

Before:

MR JUSTICE FORDHAM

- -

Between:

DARNELL DAVID WRIGHT	**Applicant**
- and -	
(1) BEDFORDSHIRE YOUTH COURT	
(2) CROWN PROSECUTION SERVICE	**Respondents**

- -
- -

Oliver Small (Hodge Jones Allen) for the **Applicant**
Douglas Tomlinson (Crown Prosecution Service) for the **Second Respondent**

Hearing date: 1 December 2021

Judgment as delivered in open court at the hearing

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Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM:

1. By a CPR Part 8 claim form issued on 27 October 2021 Ms Liggins of HJA Solicitors applied for habeas corpus. Her witness statement in support of that application explained that she was seeking the Applicant's immediate release from detention. He had been 'recalled' to detention on 5 June 2021 following an arrest on suspicion of a matter which was not subsequently proceeded with. The Applicant is now aged 19. No application has been made for anonymity and Mr Small has helpfully referred to JC v Central Criminal Court [2014] EWHC 1041 (Admin) as authority for the proposition that the previous statutory anonymity falls away. Mr Tomlinson makes the same point by reference to section 49 of the Children and Young Persons Act 1933.

2. The 'recall' was in conjunction with a 24 month sentence imposed by the First Respondent on 28 January 2020. The Applicant's case (by reference to materials on which reliance is placed) in the application for habeas corpus was that the First Respondent had imposed an unlawful 24-month sentence of detention in a young offender institution (YOI), from which the Applicant had been released at the half-way point (6 January 2021), that sentence being contrary to the statutory prohibition in section 78 of the Powers of Criminal Courts Sentencing Act 2000, which limits a magistrates court (and therefore a youth court) to a 6 months YOI detention sentence. Under section 91 of the Act a longer period of YOI detention can be imposed following a conviction on indictment, in the crown court. The Applicant's case was therefore that there was no power to detain him on 'recall'. The application also pointed out that, even if the Applicant had been the subject of a lawful sentence imposed by the First Respondent of a 24 month Detention and Training Order (DTO), the maximum period of detention following a 'recall' would have been 3 months pursuant to section 104(3A) of the Act.

3. The application for habeas corpus came for "initial consideration" on the papers (CPR 87.3-87.4) before Thornton J. She made a direction giving both Respondents an opportunity to respond to the arguments which the Applicant was making, after which the application would be referred to a further Judge on the papers. For whatever reason, no response was received from the Respondents in the time which Thornton J directed. The application for habeas corpus then came before me. I gave a further opportunity for the Second Respondent (the CPS) to respond, with directions to ensure that the papers came to the attention of an appropriate person at the CPS. I was very keen to know what the CPS position in this case was. I directed that if a skeleton argument was submitted by the CPS resisting the application for habeas corpus, there would be an oral hearing next Monday before me. I also made clear that, absent a skeleton argument from the CPS resisting the application for habeas corpus, I would deal with the issue of habeas corpus on the papers.

4. The CPS took the opportunity afforded by my Order and have provided the Court with a helpful skeleton argument accompanied by materials. The CPS contends (by reference to materials on which reliance is placed) that what has happened in this case is as follows. The First Respondent actually imposed a lawful 24 month DTO, rather than an unlawful 24 month YOI detention order. However, the CPS accepts – in consequence of section 104(3A) – that following the recall in June 2021 the statutory three month maximum post-recall custody has now been exceeded and the Applicant is entitled in law for that reason to be released. So, the skeleton argument does not resist the application for an order for release. The CPS agrees that such an order is appropriate.

That means the hearing next Monday has not been triggered in accordance with my Order. I have been able to address with the legal representatives of the Applicant and the CPS what the Court should do now, in these circumstances. The assistance which I received included a helpful analysis of CPR 87, and what the Court could and could not do on the papers and without a hearing, from Mr Tomlinson. I also wish to record that I was greatly assisted by Hannah McNabb, the lawyer within the Administrative Court Office, who has been dealing with this case.

5. One question which needed consideration was whether any other party ought to be notified and given the opportunity to be heard or appear in court. In a habeas corpus case, if an order is made for the "issue of the writ" (CPR 87.4(a), 87.5(a)), the detainee will need to be brought before the court, by the custodian. I understand that the Secretary of State for Justice is also notified in such circumstances. In addition to that, Mr Tomlinson of the CPS raised in the skeleton argument the fact that the 'recall' in this case is a matter which would stand to be explained by the Probation Service, and that the Parole Board also has an interest and involvement in this case having declined to release the Applicant on 29 September 2021. As between the Applicant and the CPS it is common ground that it is unnecessary to delay this matter or notify any further party, since the clear position – on each of the two possible explanations for what has happened (YOI detention or DTO) – provides the same clear-cut answer: the Applicant is entitled as at today to be released. It is also common ground that release would be the only matter with which this Court is dealing on this application. Nobody is able to identify or foresee any possible point that could be raised by any other party which could make a difference on that matter. There is no need for this Court today to be determining other questions as to which of the two alternative factual descriptions of the underlying sentencing action in this case is the correct one, still less determining questions as to the point at which the Applicant's detention became legally unjustified, nor any other matter. It is sufficient that, by whatever factual route and consequential legal analysis, the same terminus is arrived at: the Applicant is legally entitled to be released.

6. The parties before me are agreed that the appropriate course is for this Court to act decisively today and make an order for the Applicant's release. I am grateful to them both for their cooperation and assistance, and for their recognition of the implications in a case involving deprivation of liberty and a young person. This is not a matter that can proceed by consent, especially since the custodian is not before the Court. Moreover, the Court has to take responsibility for the actions which the Court takes on the application.

7. What I did, earlier today, was to direct that there be an urgent hearing by BT conference call this afternoon (CPR 87.4(1)(b)). As I have already explained, there was to be a hearing in court next Monday had the CPS been resisting the application for release by way of habeas corpus. Earlier today, I also dispensed with the need for two days' notice on the part of the applicant and respondents (CPR 87.4(4)). I was acutely conscious that I was directing an oral hearing the fact and timing of which would not be published in the cause list and therefore not accessible to anyone wishing to observe it. I was also satisfied that the position in this case is very clear-cut and that I would be able to explain by means of this short judgment what had happened, what I had done, and why. I am satisfied that the open justice principle has not been unjustifiably interfered with, still less abrogated. My clerk alerted the reporters who were present at my two hearings this

morning to the fact of the urgent telephone hearing taking place this afternoon, and they have attended. The hearing was recorded and this judgment will be released in the public domain.

8. At the hearing this afternoon I am making an order that the Applicant must be released. That is an order made at a hearing (CPR 87.5(g)). It is an order which stands as sufficient authorisation for the Governor of YOI Feltham to effect the release of the applicant by virtue of CPR 87.6. It is an order supported by the Applicant and by the CPS. I am quite satisfied that the Applicant is legally entitled to be released. I am also satisfied that the course which I have taken in this case, which enables the position to be resolved today is a course which was necessary and appropriate in the interests of justice, having regard to the overriding objective and in light of my obligations as a public authority for the purposes of the Human Rights Act 1998. It would, in my judgment, not have been justified for there to be any further delay and any further deprivation of liberty while some further step or prolonged timetable was countenanced by this Court. I am very grateful to Mr Tomlinson of the CPS, Ms Liggins of HJA and Mr Small of Counsel for the way in which they have cooperated and assisted the Court, in arriving at what in my judgment was the only just disposal of this case as at today, in the circumstances which had arisen.

1.12.21