Neutral Citation No: [2024] NICA 20	*Ref:* **McC12454**
	ICOS No: **2021/46419**
Judgment: approved by the court for handing down (subject to editorial corrections)*	*Delivered:* **21/03/2024**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

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ON APPEAL FROM THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION
(JUDICIAL REVIEW)

BETWEEN:

SHANE FRANE

Appellant:

-and-

PROBATION BOARD OF NORTHERN IRELAND
AND NORTHERN IRELAND PRISON SERVICE

Respondents:

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Ms K Quinlivan KC and Mr Séamas McGiollaCheara (instructed by Emmet J Kelly and Co Solicitors) for the Appellant
Mr Philip Henry (instructed by the Crown Solicitor's Office) for the Probation Board
Mr Tony McGleenan KC and Ms Laura McMahon (instructed by the Departmental Solicitor's Office) for the Prison Service

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Before: McCloskey LJ and Horner LJ

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McCLOSKEY LJ (*delivering the judgment of the court*)

[1] In its original incarnation this was a challenge by the appellant, a sentenced prisoner, pursuing mandatory orders compelling the respondents to provide him with (a) "purposeful" periods of temporary release, (b) a bespoke programme of (drugs?) testing and (c) a system for the assessment of eligibility for pre-release testing. The legal grounds of his challenge were twofold, namely, (i) an asserted breach of the duty owed to him by the respondents under article 5 ECHR (and, thus, contrary to section 6 of the Human Rights Act 1998) and (ii) an asserted failure to adhere to the recommendations of the Parole Commissioners of 10 March 2021. The application for judicial review was dismissed and the appellant appeals to this court in consequence.

[2] In his judgment Humphreys J provided a summary of the factual framework which includes, inter alia, the following: by reason of failing a drugs test in May 2021 the appellant rendered himself ineligible for pre-release testing ("PRT") for a period of three months; this was repeated in October 2021; his PRT in May and June 2022 was positive; and from February 2022 the appellant availed of further opportunities provided to him.

[3] The judge concluded, first, that the appellant's personal misconduct was the reason for the non-provision of the PRT regime to him earlier than October 2021, with the result that no breach of the article 5 ECHR duty had been established. In his second conclusion the judge rejected the second ground of challenge on the ground that there had been no failure to comply with any recommendation of the Parole Commissioners and in any event relevant active steps were taken vis-à-vis the appellant during the period under scrutiny.

[4] The chronology of the appellant's case has the following noteworthy features:

(a) The material events begin in April/May 2021.

(b) These proceedings were commenced in 2021.

(c) The chronology continued to evolve subsequent to the issue of proceedings.

(d) The judgment of the High Court was promulgated on 27 October 2022.

(e) The Notice of Appeal is dated 6 December 2022.

(f) By the first of its case management directions orders dated 9 January 2023, this court allocated a substantive hearing date of 31 March 2023, giving effect to the joint request of the parties.

(g) The second such order of this court, following another inter-partes listing on 2 March 2023, affirmed this hearing date.

(h) By its further order dated 24 March 2023 this court, generously, vacated the hearing date on the ground that the appellant's application for legal aid remained unresolved.

(i) Legal aid was granted in September 2023.

(j) From 17 January 2024 until 9 February 2024, the appellant was unlawfully at large following an unaccompanied temporary release.

[5] On 6 February 2024 the court convened an inter-partes listing for the purpose of examining the status and viability of this appeal. Neither of the appellant's instructed counsel attended. The appellant was represented by junior counsel who

had been instructed solely for the purpose of this listing and had not previously represented his client. No submissions of substance were advanced to the court.

[6] The further written representations provided pursuant to the order of the court simply rehearse that the appellant's original instructions were to pursue an appeal only if legal aid were granted, he had not revoked these instructions and there had been no further communication with him since 17 January 2024.

[7] There is no indication of any of the following material dates: the date when the appellant first provided his instructions to appeal and the date or dates of any material communications with or further instructions from him since the filing of the Notice of Appeal some 14 months ago.

[8] In the circumstances outlined above, this court readily concludes that the appellant has not been actively pursuing his appeal for some considerable time, in circumstances where the only explanation for any initial inertia was the delay in securing public funding. This court's second conclusion is that the factual matrix prevailing at first instance must inevitably have altered significantly by reason of (a) the passage of almost one and a half years and (b) the most recent events noted above. This points strongly to the assessment that the appeal has become academic.

[9] This court further takes into account that the grounds of appeal begin with the meaningless contention that "… the learned judge erred in fact and/or law when refusing to grant the application for judicial review", a linguistic formula repeated in the 7th and 8th grounds, while the intervening five grounds are replete with the formulation that the trial judge "erred" without any specification whatsoever of the suggested errors of law. This court has repeatedly observed, in the context of all kinds of appeals, that grounds of appeal formulated in these or kindred terms are meaningless. It follows that there is no coherent challenge to the judgment at first instance. Furthermore, and in any event, there is no material error of law in the judgment of Humphreys J apparent to this court.

[10] Giving effect to the foregoing, the formal order of this court will be that this appeal is dismissed on the grounds that (a) the appellant is guilty of a manifest want of prosecution, (b) it has been rendered academic by supervening events and (c) the Notice of Appeal discloses no coherent grounds of challenge to the order and judgment at first instance.