



30 January 2013

PRESS SUMMARY

B (Algeria) (FC) (Appellant) v Secretary of State for the Home Department (Respondent)
[2013] UKSC 4
On appeal from: [2011] EWCA Civ 828

JUSTICES: Lord Neuberger (President), Lady Hale, Lord Kerr, Lord Sumption, Lord Carnwath

BACKGROUND TO THE APPEALS

'B' is an Algerian national whose true identity has not been revealed. He was sentenced to four months imprisonment by the Special Immigration Appeals Commission (SIAC) on 26 November 2010 for contempt of court. That sentence was imposed because of what was found to be B's deliberate refusal to obey an order of SIAC on 19 July 2007. This had required B to disclose his true identity, to give certain particulars and to provide a DNA sample. B had provided the sample but had not revealed his identity.

B appealed the order committing him for contempt. He argued that the sentence of imprisonment gave rise to breaches of articles 3 and 8 of the European Convention on Human Rights (ECHR). SIAC had found that B was unlikely to relapse into paranoid psychosis if committed to prison. He had suffered from that condition previously and there was medical evidence that, if imprisoned, he was likely to react by refusing medication and consequently reverting to a psychotic state. B argued that SIAC had failed to give reasons for finding that B would continue to take his medication if imprisoned. He also argued that the sentence of four months was excessive.

The Court of Appeal held that SIAC had erred in rejecting the evidence of two psychiatrists that B would refuse to take his medication and that, in consequence, the onset of a psychotic state was likely. A majority of the Court of Appeal (Laws LJ and Longmore LJ) held that, notwithstanding SIAC's error, the appeal should be dismissed. They rejected arguments on articles 3 and 8, finding that there would be no breach of article 3 as arrangements would be in place for B's treatment in hospital if he were to suffer a relapse. The majority was also of the view that the sentence imposed was not excessive. Etherton LJ agreed with the majority that SIAC had erred but was of the view that the case should be remitted to SIAC for reconsideration.

Permission to appeal was granted by the Supreme Court on two certified questions:

- 1) Whether the Court of Appeal is correct that it should adopt the approach of the Court of Appeal (Criminal Division) and only allow an appeal where a sentence is manifestly excessive or whether section 13 of the Administration of Justice Act 1960 gives it a broader discretion that enables it to remit a case where a first instance judgment regarding sentence was flawed and/or procedurally unfair?
- 2) Whether the Court of Appeal must remit a case where a first instance judgment regarding sentence imposed in a contempt case was flawed and/or procedurally unfair unless it concludes that the court below would have reached the same conclusion even if it had not fallen into error?

JUDGMENT

The Supreme Court unanimously dismisses the appeal. Lord Kerr gives the judgment of the court.

REASONS FOR THE JUDGMENT

References in square brackets are to paragraphs in the judgment

The affirmation of the original sentence does not necessarily entail an endorsement of the reasons for which the decision was made. Where it has been determined that the basis for the original sentence of imprisonment is wrong, an assessment must indeed be carried out afresh [11]. It is not essential that this be done by the first instance court. Where an appellate court is in possession of all the relevant facts, the proper course is to determine what the sentence for contempt should be based on the true facts. Where a fresh investigation into the facts is required this should be undertaken by the first instance court. This was not such a case, however [12].

Committal is appropriate where it can reasonably be expected to induce the subject to comply with the order and/or for the purposes of punishment. It is unlikely that the fact the person subject to committal already has substantial restrictions on his liberty (the appellant is subject to stringent SIAC bail conditions) will be material where the court thinks imprisonment will induce compliance with the order. Such restrictions are also unlikely to be of much relevance where the intention of the court is to punish. [14].

There was nothing in the judgments of the Court of Appeal remotely suggestive of the view that sending the appellant to prison would bring about a change of heart on his part. The judgments make it clear that the object was to punish the contempt, not to induce compliance with the order. [16-19].

The Court of Appeal clearly dealt with the case by carrying out a fresh assessment. Its conclusions were premised on a different basis from that of SIAC in that the court had accepted that there was a real risk that B would relapse into paranoid psychosis. [20].

In this case, the sentence imposed by SIAC was not determined on the basis that it had concluded imprisonment was appropriate. It was not influenced by a consideration that B would not relapse into paranoid psychosis. It was chosen to reflect the seriousness of the contempt. It was therefore not inappropriate for the Court of Appeal to consider whether the sentence imposed was manifestly excessive. There was nothing untoward about the Court of Appeal testing its decision against the sentence SIAC had chosen [23-24]

In answer to the second certified question, an appellate court need only remit a case where a first instance judgment regarding sentence imposed in a contempt case was flawed and/or procedurally unfair if it considers that a fresh investigation of new facts is required and it is necessary or desirable that this be undertaken by the first instance court [24].

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NOTE

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. Judgments are public documents and are available at:

www.supremecourt.gov.uk/decided-cases/index.html