3 July 2013

PRESS SUMMARY

R (on the application of Sturnham) (Appellant) v The Parole Board of England and Wales and another (Respondents) (No. 2) [2013] UKSC 47
On appeal from [2012] EWCA Civ 452

JUSTICES: Lord Neuberger (President), Lord Mance, Lord Sumption, Lord Reed and Lord Carnwath

BACKGROUND TO THE APPEALS

This case concerns the proper test to be applied by the Parole Board when determining whether to direct the release of a person subject to a sentence of imprisonment for public protection (IPP).

On 19 May 2006 the appellant punched a man during a fight outside a pub. The man fell backwards, struck his head on the ground and died the next day. The appellant was duly convicted of manslaughter. The judge concluded that the appellant was dangerous; he was forceful, physically strong and considered that he had the right to respond with violence to any tendered or threatened towards him. Accordingly the judge decided to impose a sentence of imprisonment for public protection on the basis that there was "a significant risk to members of the public of serious harm occasioned by the commission by [the offender] of further specified offences" (Criminal Justice Act 2003, section 225(1)(b)). The judge fixed a minimum term ("tariff period") of 2 years 108 days. The tariff period expired on 19 May 2009. Following the expiry of this tariff period it was the responsibility of the Parole Board to decide whether the appellant should be released on licence. In conducting this assessment the Parole Board are required not to order release unless "satisfied that it is no longer necessary for the protection of the public that the prisoner should be confined" (Crime (Sentences) Act 1997, section 28(6)(b)).

The Parole Board review took place on 10 May 2010. The Parole Board concluded that the appellant had made significant progress but continued to present a low risk of re-offending and a medium risk of serious harm. As a result the Parole Board declined to order release. The appellant issued proceedings for judicial review, claiming (a) that the Parole Board had applied the wrong test; and (b) damages for the delay of almost one year in holding the review. The claim for damages was disposed of by the Supreme Court by judgment dated 1 May 2013, [2013] UKSC 23. Consequently, only the claim that the wrong test was applied remains for determination.

Subsequent to the commencement of the judicial review proceedings, the Parole Board directed that the appellant be released on licence. As a result the present appeal has no direct significance for the appellant's detention. Nonetheless, the matter was of significance for the Parole Board when it came before the Court of Appeal and may have a continuing significance in future cases. Consequently, the appellant seeks permissions to appeal to the Supreme Court.

JUDGMENT

The Supreme Court grants permission to appeal but unanimously dismisses the appeal. The judgment of the Court is given by Lord Mance.

REASONS FOR THE JUDGMENT

- Section 225(3) of the Criminal Justice Act 2003 ("the 2003 Act") introduced a new form of indeterminate sentence, imprisonment for public protection, based on offending which was either of a kind for which a life sentence was not available or not of such seriousness as to justify a life sentence **[21]**.

- Sentences of IPP were fitted into the pre-existing framework established for mandatory or discretionary life sentences **[22]**, under which the criteria for imposition of a discretionary life sentence were, broadly, the commission of a very serious offence and a conclusion that the offender was a serious danger to the public and likely to remain so for an indeterminate period.

- In imposing a discretionary life sentence the court makes, at least in part, a predictive judgment as to the risk the offender will pose in the post-tariff period **[32]**. Nothing in section 225(1)(b) of the 2003 Act suggests a distinction between the approach required when imposing a discretionary life sentence and when imposing a sentence of IPP **[33].** It is difficult to square the reasoning in *R v Smith (Nicholas)* [2011] UKSC 37 that no such predictive judgment is involved when imposing a sentence of IPP with other case-law or to see why *Smith* needed to address that point. The reasoning in *Smith* is thus questionable, but since it was not challenged on this appeal and is not ultimately decisive, no more need be said about it. **[34-38]**.

- The suggestion in *R v Parole Board, Ex parte Bradley* [1991] 1 WLR 134, 143F, 144H, 145F-G and 146A-C that the reference to future offending being "likely" involves a test of mathematical probability is unsound. It is not helpful to define "significant risk" in terms of numerical probability, whether as 'more probable than not' or by any other percentage of likelihood **[17]**. A test of "good grounds" is more appropriate **[28]**.

- The test to be applied by the Parole Board when considering whether to direct release on licence from IPP is not the same as the test applied by the sentencing judge when imposing the sentence of IPP in the first place **[39]**. The two tests are, both in their terms and in their default position, substantially different **[41]**.

- By introducing a sentence of IPP into the framework applicable to discretionary life sentences, Parliament must on the face of it have intended that release from a sentence of IPP should be subject to the like test as release from a discretionary life sentence **[42]**.

- There is no reason why the statutory scheme should not involve a high threshold for imposition of a sentence of IPP than for continuing detention post-tariff **[44, 48]**.

- The European Convention on Human Rights does not require a different result. Strasbourg case-law accepts a sufficient causal connection between the imposition of a sentence of IPP and the deprivation of the offender's liberty in the post-tariff period when release is contingent on him demonstrating to the Parole Board that he no longer poses a risk **[48]**.

- There was not basis for interfering with the decisions below that the appellant had not established that the Parole Board wrongly took into account directions by the Secretary of State on the test to apply, which the Secretary of State had no power to give **[50-53]**.

References in square brackets are to paragraphs in the judgment