



12 February 2020

PRESS SUMMARY

R (on the application of Jalloh (formerly Jollah)) (Respondent) v Secretary of State for the Home Department (Appellant)

[2020] UKSC 4

On appeal from: [2018] EWCA Civ 1260

JUSTICES: Lady Hale, Lord Kerr, Lord Carnwath, Lord Briggs, Lord Sales

BACKGROUND TO THE APPEAL

This appeal is about the law on damages for false imprisonment. It requires the Supreme Court to consider the meaning of imprisonment at common law and whether this should be aligned with the concept of deprivation of liberty under the European Convention on Human Rights (“ECHR”).

The claimant (who claims to be a Liberian national named Ibrahima Jalloh, although his identity is disputed by the Home Office) was released from immigration detention on bail in October 2013. On the following day, he reported to an immigration officer. He was given a document headed “NOTICE OF RESTRICTION” purporting to impose restrictions on him under paragraph 2(5) of Schedule 3 to the Immigration Act 1971. The restrictions included a requirement to report to an immigration officer every Monday, Wednesday and Friday, to live at a specified address in Sunderland, to submit to electronic tagging and to stay at home each night between the hours of 11.00 pm and 7.00 am. The notice warned him that he would be liable to imprisonment or a fine if he failed to comply with the curfew without reasonable excuse.

Electronic monitoring equipment was installed and the curfew was in place from 3 February 2014 until 14 July 2016, a total of 891 days. On the whole, the claimant sought to comply with the curfew although he did break it on a number of occasions, leaving the house (among other things) for religious observance and to attend family court proceedings in Coventry.

It transpired in 2016 that the Secretary of State had no legal power to impose restrictions by way of curfew in this way: *R (Gedi) v Secretary of State for the Home Department* [2016] EWCA Civ 409. In consequence of that decision, the High Court ordered the claimant’s curfew to be lifted. The Secretary of State now accepts the curfew was unlawful from the start.

The claimant sought damages for false imprisonment, arguing he had been confined to his house without any legal basis for long periods of time. Mr Justice Lewis accepted that argument and awarded him £4,000 in damages. The Court of Appeal upheld his decision. On appeal to the Supreme Court, the Home Secretary argues that (1) the curfew (although unlawful) did not qualify as imprisonment at common law; and (2) if it did, the common law concept of imprisonment should be modified and aligned with the more demanding concept of deprivation of liberty under article 5 of the ECHR.

JUDGMENT

The Supreme Court unanimously dismisses the Secretary of State’s appeal. Lady Hale gives the only judgment with which Lord Kerr, Lord Carnwath, Lord Briggs and Lord Sales agree.

REASONS FOR THE JUDGMENT

Imprisonment

The essence of imprisonment is being made to stay in a particular place by another person. The methods which might be used to keep a person there are many and various. They include physical barriers, guards or threats of force or of legal process [24].

In this case there is no doubt that the Secretary of State defined the place where the claimant was to stay between the hours of 11.00 pm and 7.00 am. There was no suggestion that he could go somewhere else during those hours without the Secretary of State's permission [25]. Although the claimant broke his curfew from time to time, this made no difference to his situation while he was obeying it. Like a prisoner who goes absent from an open prison, or a tunneller who successfully escapes from a prison camp, the claimant was not imprisoned while he was away, but he was imprisoned as long as he stayed at home [26].

Although it was physically possible for the claimant to leave, his compliance was enforced and not voluntary. He was wearing an electronic tag which meant that leaving his address would be detected. The monitoring company would then telephone him to find out where he was. He was warned in the clearest possible terms that breaking the curfew could lead to a £5,000 fine or imprisonment for up to six months or both. He was well aware that it could also lead to his being detained again under the 1971 Act. All of this was backed up by the full authority of the State, which was claiming to have the power to do this [27]. This is a case of “classic detention or confinement” [28].

Deprivation of liberty

The ECHR distinguishes between deprivation and mere restriction of physical liberty. Whether there has been a deprivation of liberty depends on a number of factors including the type, duration and effects of the confinement [29]-[30]. In *Secretary of State for the Home Department v JJ* [2007] UKHL 45, Lord Brown expressed the view that an eight-hour curfew would not amount to a deprivation of liberty for these purposes [32]. Consequently, the Secretary of State argued the curfew in this case would not amount to a deprivation of liberty, and suggested the time had come to align the domestic law of false imprisonment with the concept of deprivation of liberty under the ECHR.

The Supreme Court unanimously declines to do so. Although the common law may develop to meet the changing needs of society, this proposal would not develop the law but make it take a retrograde step. It would restrict the classic understanding of imprisonment at common law to the very different and much more nuanced concept of deprivation of liberty under the ECHR. This approach derives from the need to distinguish under the ECHR between the deprivation and the restriction of physical liberty. There is no need for the common law to draw such a distinction and every reason for the common law to continue to protect those whom it has protected for centuries against unlawful imprisonment, whether by the state or private persons [33].

Accordingly, it is possible for there to be imprisonment at common law without a deprivation of liberty under article 5. It is not necessary to decide whether the converse is true [34].

References in square brackets are to paragraphs in the judgment.

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:

<https://supremecourt.uk/decided-cases/index.html>