



10 December 2014

PRESS SUMMARY

R (on the applications of Haney, Kaiyam, and Massey) (Appellants) v The Secretary of State for Justice (Respondent) and R (on the application of Robinson) (Appellant) v The Governor of HMP Whatton and The Secretary of State for Justice (Respondents) [2014] UKSC 66
On appeals from: [2013] EWCA Civ 1587 and [2013] EWHC 3777 (Admin)

JUSTICES: Lord Neuberger (President), Lord Mance, Lord Hughes, Lord Toulson and Lord Hodge

BACKGROUND TO THE APPEALS

The appellants received indeterminate prison sentences comprising (a) a fixed “tariff” period; and (b) an indeterminate “post-tariff” period. “Post-tariff” detention was to continue until the appellants satisfied the Parole Board that they were no longer a danger to the public.

The appellants, relying upon the decision of the European Court of Human Rights (“ECtHR”) in *James v United Kingdom* (2012) 56 EHRR 399, claimed that their “post-tariff” detention was unlawful because the Secretary of State had failed to provide them with a reasonable opportunity to progress their rehabilitation and release [1].

In *James v United Kingdom*, the ECtHR found that a failure properly to progress prisoners towards “post-tariff” release breached their article 5(1) rights to liberty under the European Convention on Human Rights and made their continued detention unlawful [1].

The appellants claimed that the Secretary of State had failed to provide them with a reasonable opportunity to progress their rehabilitation and release:

- (1) Haney, relying on articles 5 and 14, claimed that he had been transferred to open prison conditions too close to the expiry of his “tariff” period to enable his immediate release.
- (2) Kaiyam, Massey and Robinson, relying on article 5, claimed that they had not been able to commence particular rehabilitative treatment programmes within a reasonable time of their “tariff” period expiring.

JUDGMENTS

The Supreme Court (a) unanimously allows Haney and Massey’s article 5 appeal, awarding Haney damages of £500 and awarding Massey damages of £600; (b) unanimously dismisses Haney’s article 14 appeal and Kaiyam’s article 5 appeal; and (c) dismisses the article 5 appeal in the case of Robinson by a majority of 4-1 (Lord Mance dissenting).

Lord Mance and Lord Hughes give the unanimous judgment in the appeals of Haney, Kaiyam and Massey.

Lord Hughes (with whom Lord Neuberger, Lord Toulson and Lord Hodge agree) gives a separate lead judgment in the Robinson appeal. Lord Mance delivers a dissenting judgment.

REASONS FOR THE JUDGMENTS

Haney, Kaiyam and Massey

Lord Mance and Lord Hughes hold that:

- (1) The Supreme Court is not bound to follow the decision of the ECtHR in *James v United Kingdom*. The ECtHR’s reasoning that a failure properly to progress prisoners towards “post-tariff” release amounted to a breach of their article 5(1) right to liberty would not be followed. The express wording of article 5(1) or 5(4) did not create any relevant duty to provide prisoners with a reasonable opportunity to progress their rehabilitation and release [18-23], [30-37].
- (2) However, the overall scheme of article 5 did impose an implied ancillary duty on the Secretary of State to facilitate prisoners’ rehabilitation and release. Breach of that duty would not affect the lawfulness of the detention, but would entitle prisoners to damages [38-39].
- (3) In respect of the appellants in the present case:
 - (a) Haney’s delay in being transferred to open prison conditions had deprived him, contrary to article 5, of a reasonable opportunity to demonstrate that he was no longer a danger to the public, an opportunity which the Secretary of State himself had said that he should have [49-50]. However, there had been no breach of article 14 in discriminating between pre- and post-tariff prisoners [53-54].
 - (b) Kaiyam’s delay in being able to commence various rehabilitative treatment programmes did not breach his article 5 rights. He had been provided with a reasonable opportunity to demonstrate that he was no longer a risk to the public through courses on enhanced thinking, drug awareness and victim awareness but his responses to those programmes had been poor [59-61].
 - (c) Massey’s delay in being able to commence an extended sexual offender’s treatment programme until nearly three years after the expiry of his “tariff” period (and after the Secretary of State had provided for a timetable which was not fulfilled) had deprived him of the reasonable opportunity to demonstrate that he was no longer a danger, in breach of article 5 [68-69].

Robinson

Lord Hughes holds that Robinson’s delay in being able to commence an extended sexual offender’s treatment programme until nearly nine months after the expiry of his “tariff” period did not breach his article 5 rights. The question was not whether the appellant had been deprived of access to a particular course, but whether he had been given a reasonable opportunity to demonstrate that he was no longer a danger to the public [85], [89-92].

Lord Mance (dissenting) considers that article 5 required that Robinson be given a reasonable degree of access to the extended sexual offender’s treatment programme, which he had not been given in the circumstances of the present case [99], [109-111].

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:

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