



Supreme Court of New Zealand | Te Kōti Mana Nui o Aotearoa

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MEDIA RELEASE

M (SC 82/2020) v ATTORNEY-GENERAL (IN RESPECT OF THE MINISTRY OF HEALTH)

(SC 82/2020) [2021] NZSC 118

PRESS SUMMARY

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at Judicial Decisions of Public Interest: www.courtsofnz.govt.nz.

Suppression

The High Court order suppressing the name and identifying particulars of the appellant and other plaintiffs remains in force.

Background

After an incident in September 2001, the appellant was charged with assault with intent to rob. He was found to be unfit to stand trial and was detained first as a special patient under the Mental Health (Compulsory Assessment and Treatment) Act 1992 (MHCAT Act) and then as a special care recipient under the Intellectual Disability (Compulsory Care and Rehabilitation) Act 2003 (IDCCR Act). His detention was deemed to be pursuant to s 24(2)(b) of the Criminal Procedure (Mentally Impaired Persons) Act 2003 (CPMIP Act). In January 2009, the criminal proceedings against him were stayed and he was transferred to a lower status: detention as a care recipient not subject to the criminal justice system. He continued as a care recipient until his release in December 2013.

The appellant commenced proceedings challenging various aspects of his detention. He failed on all issues raised before the lower Courts. The Supreme Court gave the appellant leave to appeal from the Court of Appeal on one issue: whether he was unlawfully detained after 20 December 2008 until 14 January 2009.

Issue

This issue arose because s 30(1)(b) of the CPMIP Act provides that the maximum period of detention as a special care recipient, which we call the half-sentence period, is half the maximum term of imprisonment to which the individual would have been liable if convicted.

If the individual is still detained as a special care recipient when the half-sentence period expires and two other pre-conditions are satisfied, s 31(4) provides that the Attorney-General must direct that the individual be held as a care recipient not subject to the criminal justice system. Under this status, the individual is entitled to greater freedoms and the possibility of complete release from the constraints of the regime.

The appellant's half-sentence period expired on 20 December 2008. But the Attorney-General did not make a s 31(4) direction until 14 January 2009. The delay in issuing the direction gave rise to the issue of whether the appellant was unlawfully detained after 20 December 2008, and if so, for how long.

Decision

By a majority decision, the Supreme Court has allowed the appeal and made a declaration that the appellant was detained unlawfully from 21 December 2008 until 14 January 2009.

The majority, comprising Winkelmann CJ, O'Regan and Williams JJ, held that it was open to the Attorney-General to give the s 31(4) direction before the expiry of the half-sentence period on a conditional basis, providing that the direction would not come into effect until expiry of the half-sentence period and only if the other pre-conditions were satisfied. Such a direction would need to be given on a date as close as possible to the half-sentence expiry date to ensure the decision reflects an up-to-date assessment of the detainee. Giving a conditional direction in advance avoids the obvious impracticality of requiring the Attorney-General to give the s 31(4) direction at precisely the moment the half-sentence period expires for it to be effectual. It was primarily the potential for such an impractical consequence that led the lower Courts to find against the appellant.

This did not, however, mean that the Attorney-General was without jurisdiction to give a s 31(4) direction after the half-sentence expiry date. There was nothing in the wording of s 31(4) to suggest that was the position – such an interpretation would not be consistent with s 16 of the Interpretation Act 1999, which provides that a statutory power or duty may be exercised from “time to time”. This meant the appellant's detention as a care recipient was authorised from 14 January 2009 by the s 31(4) direction given on that date.

There remained a lacuna in the period between the half-sentence expiry date on 20 December 2008 and the giving of the s 31(4) direction on 14 January 2009. The majority held that detention was unlawful during this period. Section 30 of the CPMIP Act, correctly interpreted, did not permit any extension of the original s 24 order for detention beyond the half-sentence expiry date. This was also consistent with the overall scheme of the CPMIP and IDCCR Acts. The scheme generally contemplates that orders requiring a person to be subjected to compulsory care are made by the person or court authorised to do so and that there be defined end points for detention. This interpretation was also most consistent with the New Zealand Bill of Rights Act 1990 and New Zealand's international obligations.

Given the original s 24 detention order ceased to authorise the appellant's detention as a special care recipient once the half-sentence period expired on 20 December 2008, the majority made a declaration that detention after that date was unlawful up until 14 January 2009 when the Attorney-General's s 31(4) direction authorised the appellant's continued detention as a care recipient no longer subject to the criminal justice system.

William Young and Ellen France JJ dissented. The minority saw the position as dictated by the overall scheme and purpose of the CPMIP Act, which envisages ongoing detention subject to the various safeguards in place such as regular reviews of detention status. At the relevant point, ongoing detention was the only option for the appellant. Accordingly, the minority found that while timeliness was important in administering this regime, it could not be said that the delay in this case rendered the appellant's detention unlawful. Such a delay could give rise to an arbitrary detention, but whether that was the position here could not be determined given there was no evidence as to the reason for delay. The minority would have dismissed the appeal.

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