

IN THE PAROLE BOARD

MAURICE JOHN KIRK

Applicant

-v-

NATIONAL PROBATION SERVICE

1 Respondent

and

SECRETARY OF STATE FOR JUSTICE

2 Respondent

**REPRESENTATIONS UNDER SECTION 254(2)(A) AND/OR
SECTION 255(2)(A) OF THE CRIMINAL JUSTICE ACT 2003**

INTRODUCTION

1. The Applicant was released on licence from his prison sentences passed by His Honour Judge Rowlands at Cardiff Crown Court on 2 May 2014 totalling 16 months and also by Cardiff Magistrates Court on 12 December 2014 of six weeks as reduced to three weeks by His Honour Judge Crowther QC at Newport Crown Court on 1 July 2014.
2. These representations have therefore been prepared with the assistance of the Applicant's McKenzie advisers.

APPLICANT'S ORIGINAL LICENCE CONDITIONS

3. The Applicant firstly contends that the licence wasn't lawfully signed by a person authorised to sign it by the Secretary of State and didn't have lawfully delegated authority. The licence was therefore completely invalid and wasn't lawfully issued.

4. The Applicant secondly contends that the conditions of that licence weren't in accordance with either the "standard conditions" or the regulations laid down by the Secretary of State in section 250(1)(a)(b) of the Criminal Justice Act 2003 and were consequently totally unlawful.
5. The Applicant was firstly forbidden to contact various members of his family without any valid reasons and also with no apparent application or consent from any of the family members named on the licence, (see condition x of the licence).
6. The Applicant was thereby denied his right to contact close members of his family when there were no other court orders imposed by the Family Court in force in breach of his right to family life under article 8(1) of the ECHR as incorporated under schedule 1 of the Human Rights Act 1998.
7. The Applicant was further denied the right to travel outside the United Kingdom within the European Union without permission, which was stated would be "given in exceptional circumstances only", and was thereby denied freedom of movement within the European Union in breach of articles 45 to 55 of the Treaty on the Functioning of the European Union and/or EU Directive 2004/38/E, (see condition vi of the licence).
8. The Applicant was also the subject of onerous reporting restrictions relating to his residence at Quay House Approved Premises, 1 Strand Swansea SA1 2AW, by being subject to an onerous curfew and required to report every hour outside the curfew, thus breaching his right to family life and/or privacy under article 8(1) of the ECHR as incorporated under schedule 1 of the Human Rights Act 1998, (see conditions viii and ix of the licence).
9. It is accepted that there should be a curfew and some reporting restrictions imposed, but both the hours of the curfew and the intermittent terms of the reporting conditions were disproportionate and an interference with the Applicant's family life and privacy under article 8(1) of the ECHR as incorporated under schedule 1 of the Human Rights Act 1998.
10. The conditions imposed hadn't been imposed on the Applicant at either of his sentence appearances before His Honour Judge Rowlands or His Honour Judge Crowther Q.C.

under section 238(1) and section 250(2)(a)(i) of the Criminal Justice Act 2003, and went way beyond the “standard conditions” normally imposed on released inmates under section 250(2)(a)(ii) and (4)(a) of that Act or under the regulations prescribed by the Secretary of State under section 250(2)(b)(ii) and (4)(b)(i) of that Act.

11. Therefore if the Applicant is released on licence, he applies for a variation of its terms, to comply with both his “convention rights” under the Human Rights Act 1998 and his rights to freedom of movement within the EU under articles 45 to 55 of the Treaty on the Functioning of the European Union and/or EU Directive 2004/38/E.

REVOCATION OF THE APPLICANT’S LICENCE

12. The Applicant firstly contends that the revocation of his licence wasn’t lawfully signed by a person authorised to sign it by the Secretary of State and didn’t have lawfully delegated authority. The revocation of the licence was therefore completely invalid and wasn’t lawfully issued.
13. The Applicant’s licence was in any event unlawfully revoked under section 254(1) and/or 255(1)(a)(b) of the Criminal Justice Act 2003, it being unclear under which of these provisions the Applicant was actually released under, for spurious reasons relating to the alleged publishing of photographs on his web site in breach of his “right to freedom of expression” to “hold opinions and receive and impart information and ideas without interference by public authority” under article 10(1) of the ECHR as incorporated under schedule 1 of the Human Rights Act 1998.
14. The publishing of the photographs concerned was with the full consent of the persons in the photographs and there were no restraint orders in force in respect of the publishing of such photographs.
15. Any such prohibitions would not have been “prescribed by law” nor “necessary in a democratic society” as fulfilling any pressing social need shown for prohibiting such publication, nor satisfied any of the other criteria set out under article 10(2) of the ECHR as incorporated under schedule 1 of the Human Rights Act 1998.

16. In addition, there were no prohibitions on the publication of the hostel's location or address that is widely accessible on the Internet in any event and is common knowledge in the immediate locality and Swansea area.
17. In any event, the Applicant hasn't been served with any evidence to show that any such photographs have been published on his web site or that he was responsible for such publication in any event.
18. There is no evidence available that the Applicant used any threatening or abusive behaviour towards the reception staff at the clinic concerned, and no witness statements have been served on him in relation to any of the alleged incidents.
19. The Applicant contends therefore that without either Witness Statements being served by any of the staff who are alleged to have been threatened or abused or them being called to give evidence personally before the Board, the contentions alleged in the purported detailed reasons are mere conjecture and hearsay and the Parole Board must ignore them.
20. There is also no evidence available that the Applicant used any threatening or abusive behaviour towards prison staff of either HM Prison Cardiff or HM Prison Swansea, and no witness statements have been served on him in relation to any of the alleged incidents.
21. The Applicant will rely on R. v. Hull Board of Prison Visitors ex p. St. Germain (No. 2) [1979] 1 W.L.R. 1401 for the contention that such evidence shouldn't be given in hearsay form and therefore shouldn't be taken into consideration.
22. The Applicant further contends that in the event that the specific reasons for alleged "bad behaviour" aren't proved to the satisfaction of the Board, then his previous convictions and the nature of the offences in respect of which he was sentenced to the terms of imprisonment relevant to the present application therefore cease to be of relevance as to whether he should be granted further re-release either automatically or discretionarily.

**GIVING OF "REASONS" UNDER SECTION 254(2)(B) AND 255(2)(B) OF THE
CRIMINAL JUSTICE ACT 2003**

23. Finally, the Applicant contends that any "reasons" that he has been served with either in the licence revocation notification or the further details of the "reasons" purportedly under section 254(2)(b) and section 255(2)(b) of the Criminal Justice Act 2003, which

ever provision is applicable in the Applicant's case, aren't legally valid and should be totally ignored by the Board.

24. The Applicant was neither served with either the short version of the reasons in the licence revocation notification or the further details of the "reasons" "on his return to prison" at HMP Swansea, until at least 2 weeks after his arrival in the prison as required by section 254(2)(b) and section 255(2)(b) of the Criminal Justice Act 2003, which ever is applicable.
25. As a result, the Applicant would contend that not only are both sets of "reasons" legally invalid for being served in breach of section 254(2)(b) and section 255(2)(b) of the Criminal Justice Act 2003, which ever is applicable, but he is being unlawfully continued to be detailed in custody as a result, and in breach of article 5(1)(a) and/or (b) of the ECHR as incorporated under schedule 1 of the Human Rights Act 1998.
26. In the premises, the Applicant therefore seeks his immediate release on automatic re-release as required by section 255A(2) and (3)-(6) and/or section 255B(1)-(6) of the Criminal Justice Act 2003 and/or by the Board under section 256(1)(a) and (4) of the Criminal Justice Act 2003.
27. The Applicant will consider the issue of applying for permission to apply for Judicial Review of any adverse decision of the Board, and/or a Writ of Habeas Corpus simultaneously thereby.
28. The Applicant further requires an oral hearing of his application to the Board, as a result of Osborne v. Parole Board [2013] 3 W.L.R. 1020 and full opportunities to both call and cross examine any witnesses against him, see R. v. Visitors of Blundeston Prison ex p. Fox-Taylor [1982] 1 All E.R. 646.
29. The Applicant also wishes to have the assistance of either legal representation or his McKenzie advisers at any hearing before the Board in accordance with R. v. Leicester City JJ. ex p. Barrow [1991] 2 Q.B. 260.

Dated 11 August 2014

Signed

A handwritten signature in blue ink, appearing to read 'Maurice John Kirk B Sc', with a horizontal line underneath.

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