11 May 2011

PRESS SUMMARY

R (on the application of Adams) (Appellant) v Secretary of State for Justice (Respondent); In the Matter of an Application by Eamonn MacDermott for Judicial Review (Northern Ireland); In the Matter of an Application by Raymond Pius McCartney for Judicial Review (Northern Ireland) [2011] UKSC 18
Appeals from the Court of Appeal [2009] EWCA Civ 1291; [2010] NICA 3

JUSTICES: Lord Phillips (President), Lord Hope (Deputy President), Lord Rodger, Lord Walker, Lady Hale, Lord Brown, Lord Judge, Lord Kerr, Lord Clarke

BACKGROUND TO THE APPEALS

Section 133 of the Criminal Justice Act 1988 ('s 133') provides that the Secretary of State for Justice shall pay compensation '*when a person has been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows beyond reasonable doubt that there has been a miscarriage of justice'*. It was enacted to give effect to Article 14(6) of the International Covenant on Civil and Political Rights 1966 ('Article 14(6)'), which the United Kingdom ratified in May 1976. Article 14(6) also refers to a 'miscarriage of justice'. The principal issue in these appeals was the meaning of this phrase in this context; in particular whether compensation should only be given if someone was subsequently shown conclusively to have been innocent of the offence.

The three appellants each claimed compensation following the quashing of their convictions for murder by the Court of Appeal. In each case the claim was refused on the ground that the appellant had not shown that a 'miscarriage of justice' had occurred. In Mr Adams' case, it was also refused on the ground that he had not shown that his conviction had been reversed by reason of a 'new or newly discovered fact'.

Mr Adams was convicted on 18 May 1993 of the murder of Jack Royal. His conviction was referred to the Court of Appeal in 2007 on the ground that incompetent defence representation had deprived him of a fair trial. His representatives had failed to consider unused material provided by the police which would have assisted in undermining the evidence given by the sole prosecution witness. The Court of Appeal found that if this had been done the jury might not have been satisfied of Mr Adams' guilt, although he would not inevitably have been acquitted.

Mr McCartney was convicted of the murders of Geoffrey Agate and DC Liam McNulty, and Mr MacDermott that of DC McNulty, on 12 January 1979. The sole evidence was their admissions during interviews with the police. They alleged that these had been made after ill-treatment and called other witnesses who claimed to have suffered similar treatment from the same group of police officers. The judge rejected their evidence. He had been told that a prosecution brought against one of these witnesses had not been proceeded with. But he was not told that this was because senior officers in the Department of the Director of Public Prosecutions considered that he had been assaulted by police officers to obtain his confession and that a conviction in another case, based on a confession obtained in similar circumstances and involving one of the same officers, had been quashed. The Court of Appeal in Northern Ireland quashed the convictions of Mr McCartney and Mr MacDermott on 15 February 2007 on the ground that this new evidence left it with 'a distinct feeling of unease' about the safety of their convictions.

JUDGMENT

The Supreme Court unanimously dismisses the appeal of Mr Adams and by a majority (Lord Rodger, Lord Walker, Lord Brown and Lord Judge dissenting) allows the appeals of Mr MacDermott and Mr McCartney. The majority hold that a 'miscarriage of justice' has occurred for the purposes of s 133 when a new or newly discovered fact shows conclusively that the evidence against a defendant has been so undermined that no conviction could possibly be based upon it.

REASONS FOR THE JUDGMENT

'Miscarriage of justice'

'Miscarriage of justice' was a phrase capable of a number of different meanings. It was useful to consider four categories of cases in which the Court of Appeal would quash a conviction on the basis of fresh evidence:

- Where it showed a defendant was innocent of the crime ('category 1')
- Where it was such that, had it been available at the time of the trial, no reasonable jury could properly have convicted the defendant ('category 2')
- Where it rendered the conviction unsafe in that, had it been available at the trial, a reasonable jury might or might not have convicted the defendant ('category 3')
- Where something had gone seriously wrong in the investigation of the offence or the conduct of the trial resulting in the conviction of someone who should not have been convicted ('category 4') [**9**]

The primary object of s133, and of Article 14(6), was clearly to compensate a person who had been convicted and punished for a crime which he did not commit. A subsidiary objective was not to compensate someone who had in fact committed the crime [**37**]. Category 4 fell outside this purpose as it dealt with abuses of process so shocking that the conviction should be quashed even if it did not put in doubt the guilt of the convicted person [**38**]. Category 3 was also outside s 133 because the miscarriage of justice had to be shown 'beyond reasonable doubt'. Category 3 would include a significant number who had in fact committed the offences, as an inevitable consequence of a system which required guilt to be proved beyond reasonable doubt [**42**].

Category 1 cases were clearly covered by s 133. However, the majority (Lord Phillips, Lord Hope, Lady Hale, Lord Kerr and Lord Clarke) held that the ambit of s 133 was not restricted to category 1 as it would deprive of compensation some defendants who were in fact innocent but could not establish this beyond reasonable doubt. A wider scope was plainly intended at the time of the drafting of Article 14(6). Even though it would not guarantee that all those entitled to compensation were in fact innocent, the test for 'miscarriage of justice' in s 133 (in more robust terms than category 2) was as follows:

> 'A new or newly discovered fact will show conclusively that a miscarriage of justice has occurred when it so undermines the evidence against the defendant that no conviction could possibly be based upon it' [**55**].

A miscarriage of justice in a case of that kind would be as great as it would have been if he had in fact been innocent, because in neither case would he have been prosecuted at all [**102**].

Four justices dissented on this issue. Lord Judge considered that the words 'beyond reasonable doubt' in s 133 meant that the miscarriage of justice was the conviction and incarceration of the truly innocent [**248**]. Lord Brown considered that there was no logical or principled dividing line between categories 2 and 3 [**274**] and the arguments in favour of an interpretation limited to category 1 were compelling [**277**]. Lord Rodger agreed with Lord Brown, and Lord Walker agreed with Lord Brown and Lord Judge.

Application of s 133 to cases involving a retrial

An amendment to s 133 (subsection 5A) which referred to a retrial changed the timetable for a claim for compensation. It did not mean that compensation was payable in every case in which a retrial had been ordered and the defendant then acquitted, as was argued by counsel for the intervener Barry George. The same test was to be applied. The amendment allowed for the possibility that something might emerge in the retrial which would require compensation [**104**].

'New or newly discovered fact'

Lord Phillips (with whom Lady Hale, Lord Kerr and Lord Clarke agreed) held that the phrase 'new or newly discovered fact' should be interpreted generously in accordance with the effect given to Article 14(6) by legislation in Ireland as including facts the significance of which was not appreciated by the convicted person or his advisers during the trial [**60**]. Lord Hope disagreed, considering that material disclosed to the defence by the time of the trial could not be said to be new and the focus on the state of mind of the convicted person went too far [**107**]. Lord Judge (with whom Lords Brown, Rodger and Walker agreed) preferred an approach which coincided with the test for admission of fresh evidence before the Court of Appeal, which required a reasonable explanation for the failure to adduce the evidence at the trial. This had been satisfied by Mr Adams in his case [**281**].

Disposal of the appeals

Mr Adams' appeal was unanimously dismissed on the ground that his was a category 3 case and did not fall within s 133. The majority allowed the appeals of Mr McCartney and Mr MacDermott as it had been shown conclusively that the evidence against them had been so undermined that no conviction could possibly be based upon it. The minority would have remitted their cases to the Secretary of State for further consideration in the light of the judgment.

References in square brackets are to paragraphs in the judgment