



20 July 2011

PRESS SUMMARY

R v Smith (Appellant) [2011] UKSC 37
On appeal from the Court of Appeal [2010] EWCA Crim 530

JUSTICES: Lord Phillips (President), Lord Walker, Lady Hale, Lord Collins, Lord Wilson

BACKGROUND TO THE APPEALS

This appeal concerns the imposition of two types of indeterminate sentences of imprisonment. The first is a sentence of life imprisonment, under which a prisoner is entitled to be considered by the Parole Board for release on licence once he has served a fixed term of imprisonment specified by the sentencing judge. The second is a sentence of imprisonment for public protection ('IPP') which a judge can impose on a defendant convicted of a serious offence pursuant to s 225 Criminal Justice Act 2003 (as amended), where he finds that there is a significant risk that the defendant will commit further offences that will cause serious harm to members of the public. Again, the sentencing judge will specify a minimum term to be served before the prisoner will be entitled to be considered by the Parole Board for release on licence. The test applied by the Parole Board is the same in the case of both sentences. It must be satisfied that it is no longer necessary for the protection of the public that the prisoner be confined.

Mr Smith has numerous convictions for robbery related offences. On 24 January 2000 he received a mandatory sentence of life imprisonment upon further such convictions, with a minimum term of four years. He satisfied the Parole Board that he should be released on 25 September 2004 but was arrested in 2008 on suspicion of having committed eight armed robberies between 2006 and 2007. His arrest resulted in his recall to prison under his life sentence for breach of his licence conditions. He pleaded guilty to the offences and was sentenced on 10 October 2008 to a sentence of IPP with a minimum term to be served of six years.

Mr Smith appealed against the imposition of the sentence of IPP on two alternative grounds. The first was that it was unlawful because the judge could not have been satisfied for the purposes of s 225 that he represented a significant risk to the public, given that he had been recalled to prison under his life sentence and would have to satisfy the requirements of the Parole Board before he could be released. The second was that the judge should not have exercised his discretion under s 225 to impose the sentence of IPP when it would achieve no additional benefit.

JUDGMENT

The Supreme Court unanimously dismisses the appeal. It holds that the imposition of the sentence of IPP on Mr Smith was both lawful and open to the sentencing judge in the exercise of his discretion. Lord Phillips gives the judgment of the court.

REASONS FOR THE JUDGMENT

On the lawfulness issue, the wording of s 225(1)(b) is in the present tense and requires the sentencing judge to impose a sentence of IPP if there is a significant risk of harm to the public. It would place an unrealistic burden on the judge to require him to form a view of the position at the end of the minimum term of imprisonment. It is implicit that the risk must be assessed on the premise that the defendant is at large at the moment the sentence is passed [15].

On the exercise of discretion, although it was not sensible to impose a sentence of IPP in circumstances where it will achieve no benefit, in this case it enabled the sentencing court on the most recent occasion to express its finding that Mr Smith did in fact satisfy the dangerousness provisions of the Criminal Justice Act 2003. Given that the Parole Board had earlier released him on the basis that he did not pose a risk of serious harm to the public, the judge could not be criticised for imposing a sentence that demonstrated that the contrary was the case [19].

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. Judgements are public documents and are available at:
www.supremecourt.gov.uk/decided-cases/index.html