Neutral Citation Number: [2007] IEHC 147

THE HIGH COURT

[2007 No. 434 SS]

IN THE MATTER OF AN APPLICATION FOR AN INQUIRY PURSUANT TO ARTICLE 40.4 OF THE CONSTITUTION OF IRELAND, 1937

BETWEEN

J. B.

APPLICANT

AND

THE DIRECTOR OF THE CENTRAL MENTAL HOSPITAL
AND DR. RONAN AHEARNE

RESPONDENT

Judgment of Mr. Justice McGovern delivered on the Friday 4th day of May, 2007

1. This application concerns an inquiry into the detention of J. B. who is currently detained in the Central Mental Hospital.

The Facts

2. The applicant was born on the 20th June, 1980 and came from a troubled family background. He is one of eight children. His family came to the attention of the relevant area Health Board in 1985, as there were concerns of domestic violence and physical abuse by the applicant's father. An inquiry established that one of the applicant's sisters had been repeatedly sexually abused by the applicant and another sibling and there is evidence to suggest that the applicant himself had been sexually abused between the ages of eight and eleven by a teenage male neighbour. The applicant was expelled from school and began steeling from shops, drinking and smoking cannabis from the age of thirteen. He also experimented with other drugs. In 1996, J. B. was convicted of steeling a motor vehicle and spent four years in St. Patrick's Institution. In 1998, he was again charged with stealing a vehicle and remanded in St. Patrick's Institution. On the 7th December, 2000, he was charged with criminal damage and received a sentence of sixteen months. He also received a sentence for sexual abuse and for unlawful carnal knowledge of a thirteen year old female. On the 28th January, 2002, after completing his sentence he was rearrested on a charge of sexual abuse of one of his sisters. Sadly he has had a very troubled background indeed.

3. J. B.'s first contact with the psychiatric services was in January, 1988, when he was seven years old. He was referred due to behavioural problems which were understood to originate from his parents marital disharmony and family violence. At the age of sixteen he harmed himself by cutting his elbow while smashing it into a window. At the age of nineteen he took overdoses of drugs on two occasions. While in prison in 2000, J. B. was assessed by a consultant forensic psychiatrist. At this time he had been reporting strange bodily experiences and exhibited signs of psychotic behaviour and paranoia. He has since been diagnosed with schizophrenia, alcohol dependence syndrome, harmful cannabis use and paraphilia (a preference for adolescent girls).

4. There is no doubt that he has been a danger to himself and to others, particularly adolescent girls, and that he required treatment as an involuntary patient in psychiatric institutions. Between April, 2004 and April, 2007, he has been detained as a temporary chargeable patient under the provisions of s. 184 of the Mental Treatment Acts 1945 to 1961 and it is the legality of that detention which is challenged in these proceedings.

Section 184 Orders and Extensions

5. On the 22nd April, 2004, the applicant's mother applied for an order for the detention of the applicant as a temporary patient and as a chargeable patient in an approved institution pursuant to s. 184 of the Mental Treatment Act 1945 (hereinafter referred to as "the 1945 Act"). As required under the legislation a certificate of a registered medical practitioner accompanied the application. The certificate was signed on the 28th April, 2004 and stated that the practitioner was of the opinion that J. B. was suffering from mental illness and required for his recovery not more than six months suitable treatment and was unfit on account of his mental state for treatment as a voluntary patient. Dr. Ronan Ahearne a consultant psychiatrist signed the order for reception on the 28th April, 2004.

6. On the 28th October, 2004, Dr. Ahearne signed an endorsement extending the detention of J. B. by a further period of six months from that date. A further endorsement in similar terms was signed by him on the 21st April, 2005. The term covered by the last endorsement would have expired on the 20th October, 2005. By that time the applicant would have been in detention under the s. 184 order for an initial period of six months and two further periods of six months each making in all a total of 18 months.

7. On the 18th October, 2005, a new s. 184 order was sought by the applicant's mother. A certificate of a registered medical practitioner was signed on the 18th October, 2005, certifying that the doctor was of opinion that J. B. was suffering from mental illness and required for his recovery not more than six months suitable treatment and was unfit on account of his medical state for treatment as a voluntary patient. On the same date Dr. Ronan Ahearne signed an order for reception and detention. On the 18th April, 2006, Dr. Ahearne signed an endorsement extending the period of detention of J. B. by a further six months from that date. On the 17th October, 2006, Dr. Ahearne signed a further endorsement. The position, therefore, under the fresh s. 184 order was that J. B. was detained for an initial period of six months from the 18th October, 2005 and there were two further extensions granted. The final extension expired on the 16th April, 2006. By then the applicant had been in detention on the second s. 184 order for an initial period of six months and two further periods of six months each namely a total period of eighteen months.

The Law

8. The transitional provisions under s. 72 of the Mental Health Act 2001 in respect of a person detained under s. 184 of the 1945 Act came into force on the 1st November, 2006. This section deemed a person detained under s. 184 of the 1945 Act to have been involuntary admitted under Part II of the 2001 Act and required the detention of such a person to be referred to a Tribunal by the Mental Health Commission before the expiration of the period of his detention under section 184. The Tribunal would then have to review the detention of J. B. as if it had been authorised by a renewal order under s. 15(2) of the Mental Health Act 2001. The general scheme of the transition procedure is set out in the judgment of Clarke J. in the case of *J. H. v. Russell, Clinical Director of Cavan General Hospital and Others* and I agree with his interpretation of the scheme for transitional provisions under the 2001 Act.

9. In the *J. H.* case Clarke J. also analysed the provisions of s. 184 of the 1945 Act. I agree with his analysis of the law set out in his judgment. In the course of his judgment he referred to s. 189 of the 1945 Act as inserted by s. 18 of the Mental Treatment Act 1961. This section provides that the original s. 184 order can be extended by endorsement for a further period not exceeding six months or by a series of endorsements "… none of which shall exceed six months and the aggregate of which shall not exceed eighteen months." Clarke J. stated that the effect of this was that the total cumulative period under which a person could be detained under the relevant provisions of the 1945 Act was 24 months.

10. The Supreme Court has held that the Courts should adopt a purposive approach in interpretation the provisions of the Mental Treatment Acts. But in doing so the courts have to be careful not to encroach upon or usurp the constitutional role of the Oireachtas

which is the legislative organ of the State. If the purpose of the legislature is clear and understood from a section of the Act without re-writing it then that is the appropriate interpretation for the court to take. The courts have also taken the view that the Mental Health Legislation is paternalistic in character and is intended for the care and custody of persons believed to be suffering from mental illness and also for the safety and well being of the public at large.

11. It is contended on behalf of the applicant that his detention is unlawful because, in effect, he has been detained under the provisions of s. 184 of the 1945 Act from the 28th October, 2004, until the 16th April, 2007. It is contended that this in effect frustrates the purpose of s. 184 of the 1945 Act. Mr. Rodgers for the applicant argues that while s. 184 can be used in appropriate circumstances if it doesn't achieve its purpose because the patients illness becomes intractable then one cannot use s. 184 again. Instead the patient has to be detained after being declared a person of unsound mind. Mr. McEnroy for the respondent argues that if a person's liberty has to be removed it should be done for the least period of time and that s. 184 can be operated on more than one occasion if the circumstances justify it. He argues that it cannot be right that one has to resort to the most drastic remedy namely a declaration that a patient is of unsound mind if there is evidence that a temporary order envisaged by s. 184 is appropriate. He says that in making a decision under the 2001 Act concerning the care or treatment of person the best interests of the person shall be the principle consideration with due regard being given to the interests of other persons who may be at risk of serious harm if the decision is not made. This is provided for by s. 4 of the Mental Health Act 2001.

The Evidence

12. In this case the evidence suggests that the condition of the applicant changed from time to time. I have had the benefit of reading Case Conferences dated 16th June, 2005, 2nd February, 2006 and 31st August, 2006. I have also read the psychology report with the case conference of February, 2006.

13. The Case Conference of June, 2005, establishes that by late April of 2004, the applicant was granted escorted parole with two staff once per week for one hour and that these passed off without adverse event and that a process of normalisation continued successfully for a time. The applicant displayed increased insight into his illness and it was deemed no longer necessary to administer his medications in liquid and tablet form. By July, 2004, the applicant was deemed well enough to have paroles with one staff member. However, by October, 2004, he displayed symptoms which indicated his condition was deteriorating. Nevertheless he did attempt to use his parole constructively. By September, 2004, the medication clozapine was being reduced and was finally discontinued and in November, 2004, he gave up cigarettes. His mental state was assessed on the 16th February, 2005 and was good, he presented as being insightful especially with regard to the need to adhere to medication and was aware that relapse could be participated by drug and alcohol misuse. A rehabilitation programme was structured for him with a view to his reintegration in society.

14. The Case Conference of the 2nd February, 2006, establishes that many of his paranoid and delusional symptoms returned when he was weaned of clozapine and he had to be put on that medication again. As his improvement was slow his mother applied again to have him admitted under s. 184 in October, 2005. By January, 2006, he was receiving one accompanied parole a week and it was reported that these paroles were "going well". His family began to visit him and it was expected he would be able to re-attend Usher's Island or Burton Hall in the near future. A psychology service report was received.

15. The final Case Conference is dated 31st August, 2006, the nursing reports showed that he was making reasonable progress and it is recorded that in June, 2006, he remained mentally stable with no psychotic features. It was recommended that prior to any return to the community it would be essential that he undertake an extended period of psychological intervention. Mental assessment on the 31st August, indicated that he was not depressed and his affect was congruent. A risk assessment was carried out and while it was felt that he did pose a risk of harm to others when unwell that the risk was at that time currently low. Unfortunately an independent medical examination on the 29th March, 2007, was not good and one would have to have concerns for the future. By the time that medical examination took place the transitional provisions provided for in the Mental Health Act 2001 had already come into effect. Counsel for the applicant argues that there was no reasonable basis for the beliefs that the applicant was likely to recover within a period of six months when he was certified under s. 184 of the 1945 Act or when extensions were made. Counsel for the respondent argues that if it is being said there was no basis for this opinion there should be evidence. No affidavit by a medical practitioner was submitted on behalf of the applicant.

16. The courts should not second guess psychiatrists and other members of the medical profession. It seems to me on the evidence that the applicant's condition was fluctuating and there was a genuine hope that he could be rehabilitated into society by parole and supervision. This case can be distinguished from the *J. H.* case insofar as Clarke J. held that it was clear from correspondence between two doctors that one of them did not believe that Mr. H. was likely to recover within six months. There is no evidence in this case that J. B. was not expected to require treatment for longer than six months when the two s. 184 certificates were signed. The position may now be different in view of the report of the independent medical examination on the 29th March, 2007, but I am not being asked to decide this matter on the basis of that report.

17. If there was evidence to support the views of the medical practitioners that the applicant should be dealt with as a temporary patient the question then arises as to whether or not s. 184 could be used on more than one occasion. I find nothing in the 1945 Act to suggest that the section cannot be used more than once depending on the circumstances of each case. Clearly the Act does not permit a fourth extension of six months to follow upon a s. 184 order and three other six month extensions because the Act is quite explicit in that regard. But if a fresh s. 184 application is brought in circumstances which do not make it a fiction, or a contrived means of getting around the intention of the provisions in the 1945 Act with regard to temporary chargeable patient receptions orders and temporary private patient reception orders, I do not see the resort to a second s. 184 application as making the detention of the applicant or any such patient unlawful. It seems to me however that there would come a time when the number of temporary orders and extensions would be such that they might have to be deemed unlawful on the basis that the evidence concerning the patient did not support the use of the temporary chargeable patient reception order.

18. On the particular facts of this case I am satisfied that the resort to a second order under s. 184 and the extensions made thereunder were permissible and justified and I therefore hold that the applicant's detention under the said orders, as extended, was lawful.