|  |  |  |
| --- | --- | --- |
|  |  | **Neutral Citation Number: [2003] EWHC 640 (Admin)** |
|  |  | Case No: CO/3320/2002 |

**IN THE HIGH COURT OF JUSTICE
ADMINISTRATIVE COURT**

|  |  |  |
| --- | --- | --- |
|  |  | Royal Courts of Justice Strand, London, WC2A 2LL |
|  |  | 27th March 2003 |

B e f o r e :

**THE HONOURABLE MR JUSTICE NEWMAN**
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Between:**

|  |  |  |
| --- | --- | --- |
|  | **South West Yorkshire Mental Health NHS Trust** | **Claimant** |
|  | **-and-** |  |
|  | **Bradford Crown Court** | **Defendant** |
|  | **Mr. ASecretary of State for the Home Department** | **Interested Party** |

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Miss Kristina Stern (instructed by Hempsons Solicitors) for the Claimant
Mr Kris Gledhill (Instructed by Switalskis Solicitors) for the Interested Party
Mr Martin Chamberlain (instructed by Treasury Solicitors) for the Defendant
Mr. David Perry & Mr. Nigel Giffin for the Secretary of State for the Home Department -Interested Parties

Hearing dates : 9 & 16 December 2002 & 13 February 2003**
\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HTML VERSION OF JUDGMENT**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Crown Copyright ©

**Mr Justice Newman**:

1. This application for judicial review raises a number of points, including an important point in connection with the validity and effect of an order made by a superior court of record, where the order made is beyond the jurisdiction conferred by the statute pursuant to which the court purports to act.
2. On 27 and 28 February 2001 Mr A, the first Interested Party, appeared at the Bradford Crown Court before Mr Justice Goldring charged with the murder of his sister-in-law. Consultant psychiatrists on behalf of the defence and the prosecution agreed that Mr A was suffering from a paranoid psychosis characterised by persecutory disillusions and hallucinations, and that such illness was a mental disorder within the meaning of the Mental Health Act 1983 ("The 1983 Act"). The defence did not contest the prosecution's evidence as to whether or not Mr A committed the act of killing his sister-in-law on 7 September 2000. Further, the defence invited the court to make an admission order pursuant to The Criminal Procedure (Insanity) Act 1964 ("the 1964 Act") as substituted by The Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 ("the 1991 Act"). The defence also invited the court to order that Mr A be subject to restrictions under section 5(3) of the 1964 Act (as amended). At the time of the hearing Mr A was already an in-patient in the Yorkshire Centre for Forensic Psychiatry.
3. The jury retired at 2.50 pm on 28 February 2001 and on their retirement Mr Lawler, QC for Mr A, suggested to the judge that whilst the jury were deliberating time could be spent discussing the form of order which it was likely would be made. Mr Lawler had already provided the judge with a note on this topic. He drew the judge's attention to section 5 of the 1964 Act (as amended by the 1991 Act). In particular he drew the judge's attention to section 5(2). It provides -

"(2) Subject to subsection (3) below, the Court shall either -

(a) make an order that the accused be admitted, in accordance with the provisions of Schedule 1 to The Criminal Procedure (Insanity and Unfitness to Plead) Act 1991, to such hospital as may be specified by the Secretary of State; or

(b) where they have the power to do so by virtue of section 5 of that Act, make in respect of the accused one of the following orders as they think most suitable in all the circumstances of the case,....."

Schedule 1 to the 1991 Act to which Mr Justice Goldring's attention was drawn, provides as follows:

ORDERS FOR ADMISSION TO HOSPITAL

1.----- (1) An admission order, that is to say, an order for

admission to hospital made—

(a) by a Crown Court under section 5 of the 1964 Act; or

(b) by the Court of Appeal under section 6, 14 or 14A of the 1968 Act, shall be sufficient authority for any person acting under the authority of the Secretary of State to take the person to whom the order relates and convey him at any time within the relevant period to the hospital specified by the Secretary of State.

(2) The court by which any such order is made may give such directions as it thinks fit for the conveyance of a person to whom the order relates to a place of safety and his detention there pending his admission to the hospital within the relevant period.

(3) Where a person is admitted within the relevant period to the hospital specified by the Secretary of State, the admission order shall be sufficient authority for the managers to detain him in accordance with the provisions of the 1983 Act referred to in paragraphs 2 and 3 below, as those provisions apply by virtue of those paragraphs.

(4) The relevant period for the purposes of this paragraph is—

(a) in relation to an admission order made otherwise than under section 14A of the 1968 Act, the period of two months;

(b) in relation to an admission order excepted by paragraph (a) above, the period of seven days, beginning (in either case) with the date of which the order in question was made."

The Judge's attention was drawn to paragraph 2 on the Schedule which provides:

"2.-(l) A person who is admitted to a hospital in pursuance of an admission order made otherwise than under section 14A of the 1968 Act shall be treated for the purposes of the 1983

Act—

(a) as if he had been so admitted in pursuance of a hospital order within the meaning of that Act made on the date of the admission order; and

(b) if the court so directs, as if an order restricting his discharge had been made under section 41 of that Act, either without limitation of time or during such period as may be specified in the direction.

(2) Where the offence to which the special verdict, findings or appeal relates is an offence the sentence for which is fixed by law, the court shall give a direction under sub-paragraph (1) (b) above without specifying any period."

It is material to point out that Schedule 1 contains also paragraph 4(1)

"4.—(1) If while a person is detained in pursuance of an admission order made by virtue of section 5(l)(b) of the 1964 Act (findings of unfitness to plead etc.), the Secretary of State, after consultation with the responsible medical officer, is satisfied that that person can properly be tried, the Secretary of State may remit that person for trial either—

(a) to the court of trial; or

(b) to a prison; or

(c) to a remand centre provided under section 43 of the Prison Act 1952;

and on his arrival at the court, prison or remand centre, the order shall cease to have effect."

1. Mr Lawler drew the judge's attention to the court's power to make an admission order. He stated:

"In other words your Lordship having made the admission order is obliged by statute to impose that it should be without restriction of time under section 41."

But Mr Lawler then stated:

"Now, my Lord, the only qualifications to this that I have been able to discern are first of all that I take your Lordship, please, to page 756 of Archbold..........and to The Crime (Sentences) Act 1997 section 47. Now this appears to me to enable your Lordship to specify the hospital to which the defendant can go. Because under section 47, where there is a power, as here, under 47 (i) (d) you have the power to specify the hospital unit where he should go to. In other words Parliament is giving the judge who has heard the case the power to send to the hospital that he, no doubt on the evidence which he has heard, thinks is appropriate. So, in other words, it is a substitution of the Secretary of State's power as I understand it.

And so your Lordship can in fact - if you go back to my note -you can in fact direct, if you think it right, that the defendant should be taken forthwith to the Newton Lodge Regional Secure Unit.

Of course, thereafter, if for example the Secretary of State, in consultation with the doctors, should decide that the defendant should go somewhere else, there are other provisions, as I understand it, which will enable his transfer within the system, but that at least gives your Lordship the power."

1. The judge was informed that there was a bed for Mr A at the Secure Unit. The jury returned at 3.16 pm and delivered their unanimous verdict that Mr A did the act charged against him. Mr Justice Goldring then made an order in these terms -

"As I observed when speaking to the jury, it is a very sad case. I am going to make the only order that I can in the circumstances, I order that you be admitted to a hospital - I am going to specify that hospital, it is Newton Lodge Regional Secure Unit in Wakefield - where a bed is immediately available and I order that you be conveyed there immediately."

1. Regrettably, in suggesting that the judge had the power to substitute himself for the Secretary of State in specifying the hospital to which Mr A should be admitted, Mr Lawler led the court into error. Section 47 of the Crime Sentences Act confers no such power. The only order the court could make was an order that the accused be admitted "to such hospital as may be specified by the Secretary of State". An admission order is an order for admission to such hospital as may be specified by the Secretary of State, it is not an order for admission to a specified hospital. Paragraph 1(2) of Schedule 1 to the 1991 Act enables the court,

"to give such directions as it thinks fit for the conveyance of a person to whom the order relates to a place of safety and his detention there pending his admission to the hospital within the relevant period."

The relevant period is two months.

1. Regrettably, error was then compounded by further error. The officer at Bradford Crown Court drew up and issued a form of order headed "Hospital Order with restrictions ordered under Section 41 of the Mental Health Act 1983". It contained the following errors.

1) It recorded that the defendant had been convicted of murder.

2) It recorded that the court had ordered "that within 28 days from the date of this order that the defendant should be admitted to and detained in a hospital, namely Newton Lodge Regional Secure Unit, and that the defendant should be conveyed to that hospital by Mr John Wiggins."

3) It recorded that the court further ordered that the defendant should be subject to the special restrictions set out in section 41 of the Mental Health Act 1983.

1. These errors gave rise to the following consequences:

1) Mr A was admitted to Newton Lodge and the NHS Trust (the claimant) believed that the admission was under section 37 and 41 of The Mental Health Act 1983.

2) the Secretary of State also believed that Mr A was detained under sections 37 and 41 of the Mental Health Act 1983.

3) At no time did the Secretary of State designate a hospital as Schedule 1 to the 1991 Act requires

4) The misapprehension on the parts of both the Trust and the Secretary of State as to the basis of Mr A's detention was not identified until April 2002. By then it was not possible for the Secretary of State to specify the hospital to which Mr A should be admitted as the period of two months from the date of the order had passed.

5) An attempt to resolve the problem was made by Bradford Crown Court. It issued a form of amended order on 18 April 2002, purporting to be an order for admission to hospital in appropriate terms. It was dated 28 February 2001 and carried the signature of an officer of the court and was endorsed as "an amended order reissued on 18 April 2002". For reasons which will be apparent from this judgment this form of order is a nullity and can have had no effect.

6) Since 29th April 2001, being the expiry date of the two month period during which a hospital could and should have been specified by the Secretary of State, there has been doubt as to the true basis of Mr A's detention.

7) In order to ensure that Mr A was lawfully detained, on 13 May 2002 the Trust accepted an application to detain Mr A under section 3 of the Mental Health Act 1983.

1. These events and their consequences give rise to matters of public interest and concern for the following, among other, reasons:

1) it is clear Mr A is potentially very dangerous;

2) there is a need for the lawfulness of his detention between 29 April 2001 and 13 May 2002 to be clarified;

3) there are grounds for public concern given that the true intention of the court was that Mr A should be detained with appropriate restrictions as set out in the Mental Health Act 1983 and applied to detention under the 1964 Act as amended by the 1991 Act (see paragraph 2(1) of Schedule 1). The court was required to direct that Mr. A be detained subject to restrictions. Such restrictions include the requirement that the Secretary of State consents to any leave under section 17 of the Mental Health Act 1983, that the Secretary of State consents to any discharge of the patient under section 23 of the Mental Health Act 1983, that the Mental Health Review Tribunal has the power to order a conditional discharge, deferred if necessary, under section 73 of the Mental Health Act 1983, and that there is a power on the Secretary of State to recall the patient after he is conditionally discharged, under section 42 of the Mental Health Act 1983.

**The Proceedings for Judicial Review**

1. When the matter first came before the court the defendant and Mr A were represented, but the Secretary of State for the Home Department was not. At the invitation of the court and at adjourned hearings, he has through Counsel, Mr Perry and Mr Giffm, assisted the court considerably in respect of the matters to which the proceedings give rise.
2. The issues which arise for determination are as follows:

i) What was the effect of the order made by Mr Justice Goldring on 28 February 2001

ii) What was the status of Mr A's detention following the order dated 28 February 2001 in the following periods:

a) 28 February - 28 April 2002;

b) 28 April 2001 - 13 May 2002;

c) 13 May 2002-to date?

1. Having regard to the submissions made by Counsel for each of the parties, the following further questions can be identified as requiring an answer:

i) What steps (if any) should the Secretary of State have taken in the light of the order made by Goldring J. ?

ii) What consequences flow from the omission/failure by the Secretary of State to take any such action ?

iii) Does the court have any jurisdiction to grant relief having regard to section 29 (3) of the Supreme Court Act 1981 ?

iv) What relief (if any) should the court grant having regard, in particular, to the public interest ?

1. The position of the parties has changed since the proceedings commenced. The Trust no longer seeks a declaration that it has acted lawfully at all times in detaining Mr A. As between the claimant and the defendant there has been a margin of difference as to whether it was necessary or appropriate for the order of Mr Justice Goldring to be quashed. Mr Chamberlain, Counsel for the defendant, contrary to the submission of Miss Stern for the claimant, submitted that there had been no error which required the order to be quashed, since the mistake made by Mr A's Counsel, which led the judge to specify the unit to which Mr A should be admitted, was a purely technical error, which had not affected the legality of the order or the legality of any detention.

**Mr A's position**

1. Mr Gledhill, who has appeared for Mr A, has made detailed submissions. The principal points to which it is necessary to draw attention are the following:

i) That the Secretary of State for the Home Department should have been aware

that the court had no jurisdiction to make a section 37/41 Mental Health Act Order. He submits that in failing to designate a hospital in the two month period, there was a culpable failure on the part of the Secretary of State for the Home Department.

ii) That the claimant was under a duty to ensure that the basis for Mr A's detention was carefully looked at and to act with expedition. In the circumstances it had failed in both respects and should not be granted any relief at the discretion of the court. Further, that there was no need, from the point of view of the protection of the public, for the order to be quashed and for a fresh order to be made because Mr A is now detained under the civil provisions of the Mental Health Act 1983.

1. At the adjourned hearing Mr Gledhill submitted that the matter related to a trial on indictment and so was excluded from the purview of the High Court by reason of section 29(3) of the Supreme Court Act 1981. Once argument had commenced he accepted that this court was bound by authority to conclude that proceedings under section 4A of the 1964 Act are not proceedings relating to trial on indictment for the purposes of section 29(3). He reserved his submission for a higher court, (see R v Grant [[2002] 2WLR 1409](https://www.bailii.org/ew/cases/EWCA/Crim/2001/2611.html%22%20%5Co%20%22Link%20to%20BAILII%20version), R (Young) v Central Criminal Court [2002] 2 Cr. App. R. 12, R (Kenneally) v Crown Court at Snaresbrook. [2002] 2 WLR.1430)

**Conclusions**

1. I reject the argument that the error made by Mr Justice Goldring can be treated as technical. His words cannot be interpreted as meaning that he simply intended to identify Newton Lodge Regional Secure Unit as an interim place of safety pending the specification of a hospital to which Mr A should be admitted by the Secretary of State. Mr. Lawler led the Judge to the erroneous conclusion that he had the power to make an admission order specifying the hospital to which the defendant should be admitted. The terms in which he made his order are not open to any other interpretation. It follows that he purported to make an admission order to the Newton Lodge Regional Secure Unit in Wakefield when he had no power to do so. He made an order without jurisdiction, but in my judgment, it was not a nullity. It was an order of the Crown Court which is effective until it is set aside. It is effective for the purpose of providing for Mr A's admission to Newton Lodge Regional Secure Unit in Wakefield without limit of time. At all material times Mr A's detention has been subject to the order pronounced by Mr Justice Goldring in the Crown Court at Bradford. Having regard to the legal effect of the order made by Goldring J. the order made pursuant to section 3 of the Mental Health Act 1983 has been of no effect.
2. The concepts of voidness and voidability have no application to an order made by a superior court of record or an order made by a court of unlimited jurisdiction. The Crown Court is a superior court of record (section 4(1) of the Courts Act 1971). An order made in excess of jurisdiction is irregular and can, on such ground, be set aside. Until it has been set aside it is effective and must be obeyed. The fundamental principle is that the authority of the court cannot be undermined by "orders made by the highest court of trial in criminal matters...." being disregarded as nullities, (see R v Cain [1985] 1 AC 46, 55 and Isaacs v Robertson [1985] 1 AC 97, 101,103
3. In my judgment it is essential, in the public interest, there should be no confusion as to the statutory basis upon which Mr A is detained. There was only one order which Mr Justice Goldring could make. In my judgment the order made on 28 February 2001 should be quashed, and the matter should be remitted to the Crown Court with a direction that the Crown Court should make an order in accordance with section 5 of the 1964 Act and Schedule 1 of the 1991 Act.
4. So far as the form of orders issued by the Bradford Crown Court are concerned, they have no legal effect. It is the order as pronounced in Court which has legal effect, not the form of order drawn up by Court officials purporting to reflect the Judge's order.
5. It follows that the issues set out in paragraph 11 above fall to be answered as follows;

1) The order of Goldring J took effect so as to admit Mr. A to Newton Lodge Regional Secure Unit without limit of time. His order had to be obeyed.

2) At all material times Mr. A had been detained pursuant to the Judge's order

3) It would have been open to the Secretary of State to have specified a hospital within 2 months of the 28th February 2001, but he was not notified of the proceedings until 28thApril 2002. By then he had no power to do so.

4) The consequence of the Secretary of State not having done so is that Mr. A has been detained pursuant to the order of Goldring J.

5) The Court has jurisdiction to grant relief. Section 29(3) of the Supreme Court Act 1981 does not apply to orders under the 1964 Act.

6) The Court should quash the order of Goldring J. No particular order is required in connection with the order under section 3 Mental Health Act 1983. It has had no effect.

1. At the close of argument it was suggested one possible course might be for me, at some future date to sit in London as a Judge of the Bradford Crown Courts and deal with the remission. Counsel for Mr. A suggests that might give rise to some difficulty and in the circumstances the matter should be remitted to Bradford Crown Court in the usual way.

https://www.bailii.org/ew/cases/EWHC/Admin/2003/640.html