



OUTER HOUSE, COURT OF SESSION

[2018] CSOH 13

P207/17

NOTE BY LORD WOOLMAN

In the Petition

WILLIAM BEGGS

Petitioner

for

judicial review of a decision by the Scottish Legal Aid Board dated 16 December 2016 to refuse an application made by him for legal aid to the Supreme Court

**Petitioner: K M Campbell QC; Inksters
Respondent: Crawford QC; Scottish Legal Aid Board
Interested Party: Lindsay QC; Anderson Strathern LLP**

8 February 2018

Introduction

[1] Mr Beggs is currently a prisoner within HM Prison Edinburgh. He is serving a life sentence for the murder of Barry Wallace, who disappeared after having last been seen in the early hours of Sunday 5 December 1999.

[2] Mr Beggs has always maintained his innocence. The Court of Criminal Appeal has, however, held that there has been no miscarriage of justice.

[3] Mr Beggs believes that other evidence may assist his claim. In particular, he sought CCTV footage from cameras located in Kilmarnock town centre on the night of the

deceased's disappearance. He made a Freedom of Information request to recover that material.

[4] Strathclyde Police refused his request. In October 2010, Mr Beggs complained to the Scottish Information Commissioner, who asked Strathclyde Police to carry out a review. Following that review, the police undertook to release all except three items to Mr Beggs.

[5] In May 2011, the Scottish Information Commissioner required the police to carry out a second review. The police reported that it held no further information in respect of two of the outstanding items. It refused to release the information it held in regard to the third item, which related to the steps it had taken to verify information about a man whom they had excluded from their investigation into the deceased's death.

[6] Mr Beggs also brought that decision under review. The Scottish Information Commissioner held that the police were entitled to withhold the material in terms of sections 30 and 38 of the Freedom of Information (Scotland) Act 2002. She concluded that the sensitivity of the information, the nature of the communications and the circumstances in which the information was created were such that its disclosure would be likely to substantially inhibit officials and organisations from providing such information in future. She also concluded that Strathclyde Police were entitled to withhold personal data.

[7] Mr Beggs appealed that decision to the Inner House. In January 2014 it upheld the Scottish Information Commissioner's decision: *Beggs v SIC* [2014] CSIH 10.

[8] Mr Beggs now wishes to appeal that decision of the Inner House to the Supreme Court. He seeks legal aid for that purpose. He made his first application in 2014, which the Scottish Legal Aid Board refused on 4 November 2015.

[9] On 1 February 2016 Sheriff Morrison decided that the petitioner had probable cause and that it was reasonable to grant legal aid to him for judicial review of the refusal on

4 November 2015. The case came before Lady Wise on the question of whether Mr Beggs should be granted permission to proceed. She refused the application: *Beggs v Scottish Legal Aid Board* [2016] CSOH 90.

[10] Mr Beggs did not reclaim that decision. Instead he made a further application for legal aid, which the Board refused in late 2016 (7 September 2016, and after review 16 December 2016). Subsequently Lord Uist granted permission for a fresh petition for judicial review to proceed. In light of the decision, Sheriff McFadyen determined that Mr Beggs should receive legal aid.

Decision letter

[11] In the decision letter the Board conceded that Mr Beggs had met the probable cause test. Accordingly the sole issue is one of reasonableness. The letter is in the following terms:

“It is unreasonable to grant legal aid. There is nothing in senior counsel’s opinion of 26 September 2016 to suggest that there is anything more than an arguable case or to show that there are good prospects of persuading the UK Supreme Court of the applicant’s position. Counsel argues that the issue is primarily one of principle, but the examples of the previous decisions of the Commissioner provided in support of the application make it clear that each decision is based on its own facts and circumstances and it is not shown that a decision in this case would assist. Given the Inner House’s criticism of the applicant for not having placed specific reasons before the Commissioner as to why the public interest test favoured disclosure in the particular circumstances of his case, which in itself was a response to the applicant’s criticism of the Commissioner for having taken account of general factors rather than specific factors, it is considered unlikely that a private client of moderate means would not submit a fresh application addressing that criticism rather than incurring the cost of the proposed appeal, particularly when prospects of success appear uncertain.”

Legal framework

[12] The relevant Scottish authorities are: *K v Scottish Legal Aid Board* 1989 SC 21; *Venter v*

Scottish Legal Aid Board 1993 SLT 147; and *McTear v Scottish Legal Aid Board* 1997 SLT 108.

From them I draw the following propositions:

- a. reasonableness is a matter for the Board;
- b. it has a very wide discretion in carrying out that exercise;
- c. it can decide what weight to attach to each factor in the case;
- d. it must form its own view on the question of the prospects of success;
- e. it can take into account what a private litigant would do;
- f. any challenge made on the basis of unreasonableness must pass an “exacting” test.

Decision

[13] I conclude that Mr Beggs’ challenge does not come close to satisfying the test. It is merely a disagreement with the Board’s decision. That is not sufficient.

[14] The Board’s decision was not irrational, nor did it err in law. It looked at the advice of senior counsel and noted that he referred to the appeal as having arguable prospects of success. The Board also determined that a private client would make a further, more specific, freedom of information request, rather than hazard an uncertain, very expensive, appeal to the Supreme Court.

[15] Put short the Board was clearly entitled to reach the decision it did. It cannot be characterised in any way as irrational or unreasonable.

[16] I shall therefore dismiss the petition. Technically that means that I shall sustain the respondent’s first plea in law and the interested party’s second plea in law and repel the petitioner’s pleas.