

John Robertson v The Mental Health Tribunal for Scotland and The Scottish Ministers [first interested party]

Case Ref No: XA39/23:

Date of Hearing: 27 June 2024 at 10.30 (one Day)

Division and Senators: Second; Lord Justice Clerk, Lord Malcolm, Lord Doherty.

Livestreamed Hearing?: Yes No

Agents and Counsel (*if known*):

Kay Springham KC: Balfour and Manson LLP for Appellant

Julie McKinlay: The Mental Health Tribunal for Scotland for Respondent

Denis Edwards: Scottish Government for first interested party

Link to Judgment Reclaimed / Appealed (*if available*):

Statutory Appeal

Case Description:

The appellant is a life prisoner who was convicted of the rape and murder of his wife in 1988. Since 1992, he has been detained in hospital pursuant to a "Treatment Transfer Direction" initially made in terms of section 71 of the Mental Health (Scotland) Act 1984. He has been diagnosed with bipolar affective disorder, mixed personality disorder and non-progressive cognitive impairment. In January 2023, his Risk Management Officer requested that he be reviewed to assess whether he continued to meet the criteria for a TTD, following which she recommended that his TTD be revoked. The appellant's case was referred to the Mental Health

Tribunal, which, on 2 August 2023, concluded that it was not necessary for the appellant to be detained in hospital and revoked the TTD. The Tribunal considered that, while the appellant required treatment to prevent his disorder worsening, it could be provided within the prison setting. It further acknowledged that “careful planning” would be required to facilitate the appellant’s transfer back to prison and that it was confident the appellant that would not be transferred to prison “until his identified needs are appropriately met”.

The appellant challenges that decision on three grounds. First, that the Tribunal failed to give weight to material considerations, *viz.* (i) the reasons why the TTD was made in the first place; (ii) whether the medical treatment it regarded as available to the appellant in the prison setting required to be provided on a compulsory basis; and (iii) what plan had been put in place to manage the appellant’s increased risk of relapse and suicide in the prison setting as described in the evidence. Second, that the Tribunal gave inadequate reasons for its decision, having not expressly made findings of fact relating to *inter alia* whether treatment in the prison setting was compulsory. Third, that the decision was not supported by the facts, insofar as findings in fact were made. In particular, the Tribunal proceeded on the erroneous understanding that it was lawful for the appellant to continue to be detained in hospital following revocation of his TTD.