

Criminal sentencing — defence counsel's oversight — exceptional circumstance in relation to life sentence

COURT OF APPEAL
Criminal Division

Published March 29, 2000

Regina v Stephens (Michael)

Before Lord Justice Rose, Mr Justice Potts and Mr Justice Curtis

Judgment February 10, 2000

Where defence counsel failed to inform the defendant as to the likelihood of his receiving a mandatory life sentence if he were to be convicted of causing grievous bodily harm with intent, having previously been convicted of unlawful sexual intercourse with a girl under the age of 13, an offence to which section 2 of the Crime (Sentences) Act 1997 applied, that failure was capable of giving rise to an exceptional circumstance within the meaning of section 2(3) of the 1997 Act.

The Court of Appeal, Criminal Division, so held in allowing an appeal by Michael Stephens against a sentence of life imprisonment imposed on March 3, 1999, by Mr Recorder Hickinbottom at Carmarthen Crown Court on his conviction of causing grievous bodily harm with intent. The determinate period was expressed to be four years and the specified period was set at 20 months imprisonment.

No verdict was taken in relation to the alternative count of inflicting grievous bodily harm.

Mr Simon Carr, who did not appear below, for the appellant; Mr William Peters for the Crown.

LORD JUSTICE ROSE, giving the judgment of the court, said that counsel representing the defendant at his trial was caught unawares by the 1997 Act and failed to advise the defendant that if he were convicted of causing grievous bodily harm with intent he risked a mandatory life sentence for a second serious offence. In view of his earlier conviction of unlawful sexual intercourse with a girl under the age of 13, in the absence of exceptional circumstances.

If the defendant had been made aware of that fact he might have decided to plead guilty to the alternative charge of inflicting grievous bodily harm, a plea that would have been acceptable to the Crown.

In their Lordships' judgment the lack of appropriate advice gave rise to exceptional circumstances for the purposes of section 2(3) of the 1997 Act in relation to this offender. The life sentence would therefore be quashed. A sentence of four years imprisonment was entirely appropriate.

Solicitors: D. J. Griffiths & Co, Bromley; Crown Prosecution Service, Dyfed-Powys.

Practice — mistaken belief that solicitors authorised to accept service — extension of time for service not justified

QUEEN'S BENCH DIVISION

Published March 29, 2000

Smith v Probyn and Another

Before Mr Justice Morland

Judgment February 25, 2000

Service of a claim form on solicitors in the mistaken belief that they were authorised to accept service would not justify an extension of time for service under rule 7.6(3)(b) of the Civil Procedure Rules where no written notification has been obtained from the solicitors as required for such service by rule 6.4(2) that they were so authorised and where there was nothing to prevent personal service on a defendant.

Rule 7.5(2), providing that the claim form must be served within four months after date of issue, permitted one day more for service than the former Order 6, rule 8(1)(c) of the Rules of the Supreme Court.

Mr Justice Morland so held in the Queen's Bench Division when dismissing an appeal by Mark Smith, the claimant, against the refusal by Master Trench on January 20, 2000 to order that the claim form and particulars of claim alleging defamation served on the solicitors of the defendants, David Probyn and PGA European Tour Ltd, constituted valid service on the defendants, or to grant an extension of time for service of those documents.

Mr Richard Parkes for the claimant; Miss Catherine Gibaud for the defendants.

MR JUSTICE MORLAND said that the claimant served the claim form on the defendants' solicitors in the mistaken belief that they were authorised to accept service and after failing to obtain written confirmation of authorisation as required under rule 6.4(2).

Accordingly, there was no effective service upon the defendants. It could not be said that the claimant took all reasonable steps to serve the claim form but was unable to do so. There was nothing to prevent personal service and therefore the appeals would fail.

Despite the note at rule 7.5.1 of the Civil Procedure Rules that rule 7.5 effected no change in the former rules of Order 6, rule 8 of the Rules of the Supreme Court which provided that a writ was valid for four months beginning with the date of issue, there was a clear contrast between the two regimes as the new rules permitted an extra day for service.

Solicitors: Sweystone Walsh; Harbottle & Lewis.