

SHERIFFDOM OF LoTHIAN AND BORDERS

Court Ref No: B638/15

DECISION

by

SHERIFF PRINCIPAL
MHAIRI M STEPHEN QC

In the Appeal

By

D. W.

against

THE DECISION OF THE MENTAL
HEALTH TRIBUNAL FOR SCOTLAND
DATED 26 MARCH 2015

Act: Appellant in person with Ms E.E. (named person)
Alt: Mr Hunter, solicitor for the Mental Health Tribunal for Scotland

EDINBURGH, 24 June 2015

The Sheriff Principal having resumed consideration of the appeal refuses the appeal and makes no order as to the expenses occasioned by the appeal procedure.

(signed) *Mhairi M Stephen*

NOTE:

1. The appellant is D. W., a patient who was detained in terms of a short term detention certificate dated 3 March 2015. A short term detention certificate (S.T.D.C.) will cease at midnight at the end of the 28th day unless it is previously revoked or extended.

2. The patient now appeals the decision of the Mental Health Tribunal for Scotland (M.H.T.S.) dated 26 March 2015. On that date the M.H.T.S. heard an application by the patient in terms of section 50 of the Mental Health (Care and Treatment) (Scotland) Act 2003 ("The 2003 Act") to revoke the S.T.D.C.. Section 50(4) of the 2003 Act sets out the function of the M.H.T.S. when considering an application for revocation of an S.T.D.C.. It is clear that the tribunal require to consider and decide whether or not they are satisfied firstly, that the conditions mentioned in paragraphs (a), (b) and (d) of section 44(4) of the 2003 Act continue to be met in respect of the patient and secondly, whether it continues to be necessary that the patient be detained in hospital. If not satisfied as to both the tribunal shall revoke the certificate. The tribunal is directed to consider section 44 which is found in part 6 of the 2003 Act. Sub-section (4) states:-

"The conditions referred to subsection (3)(b) above are –

- (a) that the patient has a mental disorder;
- (b) that, because of the mental disorder, the patient's ability to make decisions about the provision of medical treatment is significantly impaired;
- (c) that it is necessary to detain the patient in hospital for the purpose of –
 - (i) determining what medical treatment should be given to the patient; or
 - (ii) giving medical treatment to the patient;
- (d) that if the patient were not detained in hospital there would be a significant risk –
 - (i) to the health, safety or welfare of the patient; or
 - (ii) to the safety of any other person; and
- (e) that the granting of a short-term detention certificate is necessary."

The tribunal were satisfied that the conditions (a), (b) and (d) were met and refused the application by the appellant to revoke the S.T.D.C.

3. Accordingly, this appeal proceeds in terms of section 320(1)(a) of the 2003 Act that is an appeal against the decision of the tribunal on 26 March to refuse the application for revocation.
4. Appeals to the Sheriff Principal may be made on one or more of the grounds specified in section 324(2) of the 2003 Act. These grounds are:-
 - "(a) that the Tribunal's decision was based on an error of law;
 - (b) that there has been a procedural impropriety in the conduct of any hearing by the Tribunal on the application;
 - (c) that the Tribunal has acted unreasonably in the exercise of its discretion and
 - (d) that the Tribunal's decision was not supported by the facts found to be established by the Tribunal."
5. The grounds of appeal are contained in the patient's letter of 30 April 2015. The grounds of appeal criticise not the tribunal's decision and their approach to their decision making but rather the granting of the short term detention certificate on 3 March 2015. It is important to emphasise that my function is to determine whether the M.H.T.S. on 26 March addressed themselves to the correct legal test that is the test set out in section 50(4) and whether they considered all evidence available to them relevant to the statutory requirements of section 50(4). Did the tribunal follow proper procedure and exercise their discretion in a reasonable manner?

THE APPEAL

6. Both the appellant and the named person (his mother) addressed me in support of this appeal. It is evident that they are aggrieved by the actings of

the police and mental health professionals in respect of the appellant's detention at the beginning of March 2015. They are concerned about procedures adopted by the Mental Health Officer (M.H.O.) and the approved medical practitioner. Importantly, neither the patient nor his mother accept that the appellant suffers from any mental disorder at all far less one which satisfies the conditions set out in section 44(4).

7. The named person addressed me as to the circumstances surrounding her son's detention at the beginning of March. As is evident from the grounds of appeal her argument was directed towards the circumstances surrounding the grant of the original short term detention certificate rather than the decision of the M.H.T.S. of 26 March 2015.

8. Mr Hunter, for the M.H.T.S., confirmed certain background information namely, that an application for a compulsory treatment order had been considered by the M.H.T.S. and granted on 1 May 2015. He emphasised that the function of the appellate court is to consider the decision made by the M.H.T.S. on 26 March 2015. The tribunal is a statutory body whose powers and functions are limited by statute (The 2003 Act). The hearing on 26 March 2015 was the opportunity for D.W. to challenge the medical witness and the M.H.O. as to whether the statutory conditions continue to be met. The purpose of the tribunal hearing is to consider whether the conditions mentioned in paragraphs (a), (b) and (d) of section 44(4) of the 2003 Act continued to be met as of the date of the tribunal hearing. The tribunal's function is not to consider whether the relevant criteria were fulfilled when the S.T.D.C. was granted on 3 March. There is nothing in the grounds of appeal which suggests that the tribunal erred. Indeed, consideration of the tribunal decision clearly discloses that the tribunal took account of all of the evidence and were satisfied that the appellant had a mental disorder and that because of the mental disorder his ability to make decisions about his medical

treatment was significantly impaired and that if he was not detained in hospital there was a significant risk to the health, safety and welfare of D.W. and indeed to the safety of other persons. The tribunal also concluded that it was necessary for the patient to be detained in hospital. The tribunal have given full reasons and these reasons can be found at paragraphs 10 to 16 of the written decision. The appellant and the named person had the benefit of legal representation and had an opportunity to address all of these important issues before the tribunal. It cannot be said that the tribunal did not take account of the patient's representations. They were well aware of his position which was clearly articulated before the tribunal as it has been during this appeal. The tribunal record clearly that they are aware of the gulf which exists between the views of the patient and his representative on the one hand and that of the medical professionals on the other. It cannot be said that the tribunal failed to take account of all of the evidence.

9. It is not accepted that there were irregularities in the grant of the original S.T.D.C.. Any typographical or other mistakes, had they arisen, would not invalidate the S.T.D.C.. I was referred to a recent decision of mine *D. v M.H.T.S.* 2014 SLT (Sh Ct) 39. The appeal should be refused.

DECISION

10. In the written decision of the M.H.T.S. it is recorded that the appellant attended the hearing and addressed the tribunal. At that stage he was represented by a solicitor Mr Simpson. He was accompanied by an advocacy worker Mr Scott Murray and by the named person Ms E.E., who is his mother. The tribunal were also addressed by Mr Simpson and Ms E.E. and were only too aware that the patient and the named person were of the view that the application for revocation should be granted. The tribunal were acutely aware of the patient's views and those of his mother which conflicted with the evidence and opinion presented by the M.H.O. and

Medical Representative who also appeared before the tribunal. The tribunal records the opinion of the patient and his mother that he does not suffer from any mental disorder and also his mother's wish for him to return home.

11. As I have indicated, the M.H.T.S. were also addressed by Dr Andrew Watson and the M.H.O. who spoke to the conditions which the tribunal required to be satisfied about (or not) in terms of section 44 of the Act. Both Dr Watson and the M.H.O. were clear that the appellant suffered from a mental disorder and that it was necessary that he remain in hospital for treatment. The Mental Health Officer was preparing an application for a compulsory treatment order.
12. It cannot be said that the tribunal failed to address themselves to the correct legal test when considering an application for revocation. They clearly examined the evidence relating to the conditions set out in section 44(4)(a), (b) and (d) and considered they had been met and refused the application. There was ample evidence to support that decision. The reasons for the decision can be found from paragraph 10 to 16 of the written decision. The tribunal accepted the evidence of the doctor and M.H.O. as to the appellant's mental health. They were entitled to accept that evidence which confirmed that the statutory conditions were met as regards the patient.
13. When the M.H.T.S. consider an application to revoke a S.T.D.C. the tribunal members require to consider whether the section 44(4) conditions are met or not at that stage. The tribunal hearing provides both the patient (and his representatives) and the Mental Health professionals with an opportunity to bring evidence to an impartial, independent and specialised tribunal who consider, anew, any evidence and representations. I detect no error in the tribunal's approach to the evidence or the procedure adopted by the tribunal. This appeal therefore falls to be refused.

14. There are two matters which merit comment. The patient's circumstances have altered and he is now subject to a compulsory treatment order. The S.T.D.C. now has no effect and is at an end. On the hypothesis that the appeal was successful the patient's status and circumstances would be no different and the outcome of this appeal has no practical effect for the patient and is to that extent academic.

15. Finally, I was not addressed on expenses and will make no order as to the expenses of the appeal.

(signed) *Mhairi M Stephen*