

SHERIFFDOM OF LoTHIAN AND BORDERS

Case Number: B900/13

Judgment by

SHERIFF PRINCIPAL
MHAIRI M STEPHEN

in appeal
by

XY

Appellant

against

THE MENTAL HEALTH TRIBUNAL
FOR SCOTLAND, Hamilton House,
Hamilton Business Park, Caird Park,
Caird Road, Hamilton, ML3 0QA

Respondents

Act: Appellant in person

Alt: Mr Hunter, solicitor for the Mental Health Tribunal for Scotland

EDINBURGH, 28 June 2013

The Sheriff Principal having resumed consideration of the cause, refuses the appeal.

Mhairi M. Stephen

NOTE:

1. The appellant, XY who resides within this jurisdiction appeals the decision of the Mental Health Tribunal in determining his application under

section 100 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (the 2003 Act) to revoke the compulsory treatment order.

2. The appellant's application was considered by a Mental Health Tribunal on 15 May 2013. The Tribunal decided to refuse the application for revocation. It is against that decision that XY appeals.
3. The Tribunal was constituted by a legal convener, a medical member and a general member. They heard the appellant, Dr AA, the responsible medical officer and BB, the mental health officer. They took account of the documentation listed on page 2 of the decision. Their decision is in writing and gives reasons for refusal. In refusing the application the Tribunal are exercising their powers in terms of section 103(3) of the 2003 Act.
4. The written decision of the Tribunal is lodged in the inventory of productions for the Mental Health Tribunal (Production No 1). Before the Tribunal XY indicated that he did not require compulsory measures and would comply with medication voluntarily. XY has articulated both before the Tribunal and in his grounds of appeal a dislike and distrust of medical professionals. He has no history of aggression other than towards former spouses and he has without exception conscientiously complied with treatment. He is nevertheless concerned about the effect of depot injections on his physical and mental wellbeing.

5. In his letter of appeal dated 23 May 2013 the appellant does not challenge the reasoning of the Tribunal but rather the composition of the Tribunal and the grounds of appeal before me are to the effect that the Tribunal who heard his application for revocation of the compulsory treatment order was biased. In particular, the appellant states that the panel was rigged. There was no social worker or community psychiatric nurse on the Tribunal and this means in effect that there were two members of the medical profession and a legal member forming the Tribunal.

6. Additionally, the appellant suggests that the panel failed to give proper weight to correspondence sent both to the Mental Health Tribunal and the responsible Medical Officer.

7. The composition and constitution of the Tribunal is governed by the 2003 Act. Schedule 2 part 2 paragraph 7 sets out how the Tribunal is to be organised and administered and the constitution of a Tribunal. For example the Convener must either be the President of the Tribunal or a member selected from the legal panel (part 1 paragraph 1A) and there must be a member selected by the President from each of the panels mentioned in paragraphs 1(1)(b) that is someone with medical qualifications particularly in the diagnosis and treatment of mental disorder and in terms of 1(i)(c) the general member of the Tribunal must be a person who in terms of paragraph 2 of the Mental Health Tribunal for Scotland (appointment of general members) Regulations 2004 falls within one of the six categories set out in that

paragraph. Thus the general member may be a social worker with experience in the assessment and care management of persons with a mental disorder or could be a person with experience of a mental disorder and of using services provided in relation to mental disorder or could be a carer of such a person. The other categories allow for a clinical psychologist, a registered psychiatric nurse, occupational therapist or someone employed in the care service of persons having a mental disorder. It is not difficult to understand why the categories of general members are fairly wide but with appropriate experience of mental disorder. Accordingly it is entirely permissible that two medically qualified individuals may be present on a Tribunal in terms of the 2003 Act and the regulations made under that Act. Copies of the regulations are lodged in this appeal.

8. The decision dated 15 May 2013 gives the names of the various members. The Convener, who is legally qualified, is Ms Craik, the medical member Dr Clark and the general member Mrs Claire Young. In these circumstances the matter of procedural irregularity or impropriety is difficult to discern and was not argued before me by XY. The question of procedural propriety or impropriety is quite separate from the merits of the decision making. There is no suggestion in the note of appeal that the individual members failed to discharge their duty properly and to deal with the application for revocation in accordance with the law and in an objective and impartial fashion.

9. I heard XY's appeal on Thursday 27 June 2013. In his oral presentation, which he made personally without the assistance of a solicitor, he enumerated 10 points which he wished to make in support of, what must be regarded as a new ground of appeal namely that, the Tribunal on 15 May came to the wrong decision and that their decision was either unreasonable or was not supported by the facts. This did not form part of his written letter of appeal and no notice of this had been given to the Mental Health Tribunal for Scotland. Nevertheless, I heard XY. He made certain statements or assertions with regard to his medical history and presented his view of the opinion of the consultant psychiatrist and responsible medical officer; the effect of the medication and made certain personal comments about his past domestic history. I noted the assertions which he wished to make. Clearly XY's opinion does not coincide with the opinion expressed by the medical professionals to the Tribunal. XY did not refer any medical report which would contradict the view of the Tribunal or would suggest that the test for a compulsory treatment order set down in section 64(5) of the 2003 Act had not been met.

10. Mr Hunter appeared for the Mental Health Tribunal of Scotland. He addressed the issue in the written appeal namely, the composition of the Mental Health Tribunal on 15 May 2013. He reminded me that the test set out in section 64(5) of the 2003 Act being the test for the making of a compulsory treatment order is the same test that would apply in any application for revocation of a compulsory treatment order under section 100 of the Act. The

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present appeal is concerned with the Tribunal's refusal of the appellant's application to revoke the compulsory treatment order. Mr Hunter pointed out that the findings in fact set out in the Tribunal decision supported the test for the making of a compulsory treatment order.

11. In view of the additional ground of appeal presented by the appellant at the hearing I had regard not only to the composition of the Tribunal on 15 May 2013 but also the findings which they made and the reasons for refusing XY's application for revocation of the compulsory treatment order. It appears that the Tribunal had regard to matters raised by the appellant before the Tribunal. In essence they are similar to the matters raised by XY during the appeal. Nevertheless the Tribunal having regard to all the evidence before them preferred the evidence given by Dr AA, the responsible medical officer and also the mental health officer BB. They made findings in fact and concluded that the criteria for there being put in place a compulsory treatment order were met. The Tribunal were well aware of the appellant's hostility towards psychiatrists and Dr AA in particular. They narrate that in the decision.
12. The legislation also provides for the involvement of the Mental Health Officer and where appropriate intervention by the Mental Welfare Commission.
13. This appeal falls under part 22 of the 2003 Act. The appeal is against the refusal of the application under section 100 (2)(a) of the 2003 Act to revoke a

compulsory treatment order. The appeal therefore falls under section 320(1)(g). The appeal is made to me as the Sheriff Principal of the Sheriffdom in which XY normally resides. The appeal is brought in terms of section 324(2) that there has been a procedural impropriety in the conduct of any hearing by the Tribunal on the application. That section sets out the powers of the court on appeal.

14. My decision in this case is to refuse the appeal. Having regard to the terms of the 2003 Act and the Regulations made with regard to the appointment of members of the Tribunal I cannot see that there has been any irregularity in the composition or constitution of the Tribunal which sat on 15 May 2013. Nor is there any suggestion that the Tribunal members behaved in an irrational, biased or improper fashion. The decision dated 15 May 2013 gives findings and full reasons. The appellant was given an opportunity of being heard and was heard by the Tribunal. Likewise the responsible medical officer and mental health officer were also heard as is proper in terms of the legislation. The Tribunal concluded that the criteria for a compulsory treatment order were met all in terms of section 64(5) of the 2003 Act.

XY is diagnosed as having a mental disorder; medical treatment is available which would alleviate the symptoms and if that medical treatment was not provided then there would be a significant risk to the appellant's mental health and safety. On the reports and information the Tribunal concluded that the patient's ability to make decisions about his medical treatment is significantly impaired and that a compulsory treatment order is

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necessary. The Tribunal therefore applied the correct test. The Tribunal had before it information and evidence in support of these conclusions. Their findings in fact 1 – 13 are set out in the written decision.

15. The Tribunal are concerned to provide the appellant with proper and effective care. I am fully aware of the appellant's view that there is no need for a compulsory treatment order. This does not coincide with that of the medical professionals or the Tribunal. Clearly my function is to adjudicate on the appeal and whether there has been any error in law; procedural impropriety or whether the Tribunal has acted unreasonably in the exercise of its discretion. It appears that the Tribunal's decision is supported by the medical information and that the Tribunal was properly constituted. I am satisfied that the Tribunal's decision was supported by the facts which they found to be established. Accordingly, I can detect no error either in the composition of the Tribunal which would lead to any procedural impropriety nor has the Tribunal made an error by making a decision which was not supported by the facts. The Tribunal applied and met the test set out the 2003 Act for the making of a compulsory treatment order (section 64(5) of the 2003 Act). Accordingly, I will refuse this appeal.

Murray M. Stephen
