

**Edinburgh****15 September 2022****Sheriff Principal Ross**

Act: personally present

Alt: Whyte

The sheriff, having heard the applicant personally and the agent for the respondent refuses the appeal and finds no expenses due to or by either party.

Note:-

This is an appeal against the grant of a Short-Term Detention Certificate on 1 August. The appeal is refused for the following reasons (of which this is a shortened summary):-

First, the STDC has lapsed and no effective order can be pronounced. It lapsed automatically by passage of time. S's detention is currently authorised by an interim Compulsory Treatment Order granted on 31 August 2022, which is not presently under appeal;

Second, a remedy can only be granted on appeal on the basis of criteria set out in section 324(2) of the 2003 Act. The complaint that the paperwork contained a wrong date of granting (29 July instead of 1 Aug) and the wrong home address does not fulfil any of these criteria. In any event, the order itself contained the correct details;

Third, a complaint of paperwork being provided late does not meet the s.324(2) criteria either, and in any event would not, as a subsequent event, affect the validity of the underlying order;

Fourth, a complaint of how the police acted upon taking S from his home, even were it proved, is beyond the scope of this appeal, as the MHTS does not exercise any control;

Fifth, the existence of any defects in the STDC, even if proved, does not invalidate the existence of the present interim CTO. That latter order would require separate challenge under the 2003 Act, which is not done in these proceedings;

Sixth, it is not procedurally competent to challenge the interim CTO in this appeal. It would require to be challenged before the MHTS in the first instance before any appeal would lie to this court;

Seventh, and overall, S has not presented any material to this court which would show that there was any error of law, procedural impropriety, unreasonable actings or lack of supporting facts, in the making of the original decision. Accordingly, even if this court were able to retrospectively consider the status of the now-lapsed STDC, there is no material which would justify the court to interfere with it.

There is a further hearing on 21 September 2022 to consider whether the interim CTO should be renewed. S is entitled to appear or be represented to oppose that application. If there is any defect in those proceedings, he would be entitled to lodge an appeal thereafter.

Sheriff Principal Nigel Ross

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