

UK High Court Considers Handcuffing of Prisoners with Medical Conditions

R (on the application of Graham) v Secretary of State for Justice [2007] All ER (D) 383 (Nov)
(23 November 2007, Queen's Bench Division, Administrative Court, Mitting J)

The Queen's Bench Division of the UK High Court has considered whether handcuffing two sick prisoners during treatment violated their right to freedom from cruel, inhuman or degrading treatment under art 3 of the *European Convention on Human Rights*.

Facts

Elliott Graham

Mr Graham, a 28-year old man, was serving a 3-year prison sentence for possession and intent to supply cannabis, heroin and cocaine. He held an additional, previous conviction for violence when he was 18. Mr Graham was assessed as a Category C Prisoner, the lowest risk. Although he lacked the resources and connections to escape, his record indicated that he posed a potential threat to the public and to hospital staff. Therefore, he required handcuffing and a prison escort during his medical assessment and treatment.

In December 2006, Mr Graham began suffering symptoms of Hodgkin's lymphoma. He was admitted to hospital three times between December 2006 and January 2007. In February, his condition deteriorated and he began chemotherapy sessions. The combination of life-threatening illness and debilitating treatment prevented Mr Graham from taking part in any significant activity, let alone the possibility of escape. Following a plea from his physician, Mr Graham's restraints were removed and he was escorted to hospital by officers in civilian clothing to preserve his dignity. Shortly after this, the Deputy Governor decided that Mr Graham was suitable for compassionate release. His health improved and he began attending out-patient chemotherapy sessions. A fresh assessment was made as to the level of restraint required. Once again, he was accompanied by two prison officers, handcuffed during the taxi journey to the hospital and across the hospital yard, and while he remained in the hospital awaiting treatment.

Anthony Allen

Mr Allen, a 73-year-old man, was serving a life sentence for the murder of his wife and two children. Mr Allen also held convictions for offences against property, fraud and theft. He was regarded as a highly manipulative individual who tried to condition prison staff wherever possible. He was assessed as a Category B prisoner, as he posed a significant risk of escape and threat to the public. This was so despite his age and medical condition.

Mr Allen underwent treatment in January 2007 after a myocardial infarction and in April 2007 following an angina attack. He was restrained and accompanied by prison guards at all times. Mr Allen complained that the handcuffs were uncomfortable, caused him difficulty breathing and that they prevented proper insertion of a cannula into his arm. Medical staff maintained that no medical contraindications arose from his restraints.

Decision

Mitting J drew on several cases, including the test established in *Mouisel v France* [2004] 38 EHRR 34 in determining whether Mr Graham's and Mr Allen's rights under art 3 of the *European Convention* were breached. In *Mouisel*, it was established that handcuffing only gives rise to an issue when it entails the use of force, public exposure, or exceeds what is reasonably necessary to maintain public safety. This was expanded by *Gorodnichev v Russia* [2007] ECHR 52058/99 (24 May 2007), which identified the degrading aspect of handcuffing in public as giving rise to a breach of art 3. According to Mitting J, there is a point at which the judgment that a prisoner's risk of escape or of danger to the public were he to escape must be considered in the light of his medical condition. Where it is impossible for a prisoner to pose any risk due to ill-health or debilitating treatment, handcuffing will breach art 3 because it is inhumane, degrading and disproportionate to the needs of security.

In Mr Graham's case, Mitting J found two instances in which handcuffing crossed the threshold: first, when his illness was at its worst; and second, when he received chemotherapy and medical consultation as an out-patient following the improvement in his health, after which time he had been granted compassionate release and had for several days not attempted escape or posed a threat to the public.

Mitting J stated that in December 2006 and January 2007 there were grounds for believing Mr Graham posed a risk to the public, and as such it was appropriate to restrain him. However, the decision to maintain his restraints during chemotherapy and medical consultations lacked any objective justification. These were necessary to afford Mr Graham the chance of remission from a serious disease. The acute, life-threatening nature of his illness which for several weeks plainly disabled him from any significant activity made it unlikely, on any objective view, that he would deliberately forego treatment by escaping, let alone pose a risk to the public. When he recovered, Mitting J felt it was unnecessary to reimpose his restraints. Ample time had passed for assessments to be reconsidered and it was obvious that he posed no risk to members of the public.

Mr Allen's case, on the other hand, did not breach art 3. Despite his age and medical condition, Mitting J held that Mr Allen did pose a significant risk to members of the public if he were to escape. Further, there was no indication from hospital staff that handcuffing was medically inappropriate.

Implications for the Victorian *Charter*

Section 10(b) of the Victorian *Charter* enshrines the right to freedom from inhuman or degrading treatment in terms very similar to those used in art 3 of the *European Convention*. Cases such as the present provide a useful illustration of the methodology which may be used in determining the circumstances in which handcuffing may breach a prisoner's right to freedom from inhuman or degrading treatment. As Mitting J points out, these are matters of fine judgment. As such, careful consideration needs to be made of the facts in order to balance the rights of the prisoner with the public's need for protection.

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