[1999–00 Gib LR 143]

R. v. SUPERINTENDENT OF H.M. PRISON GIBRALTAR, ex parte CHICHON

SUPREME COURT (Pizzarello, A.J.): March 22nd, 1999

Prisons—medical treatment—prescription drugs—policy of confiscating all drugs from prisoners on arrival open to judicial review as public law matter—Superintendent has overall responsibilty for policy decisions concerning prisoners' health and well-being, not prison medical officer

Constitutional Law—fundamental rights and freedoms—inhuman or degrading punishment—prison policy of confiscating drugs from prisoners on arrival not inhuman or degrading punishment, contrary to Constitution, s.5(1), if medical officer prescribes appropriate substitute medication and prisoner suffers no withdrawal symptoms

Prisons—medical treatment—psychiatric treatment—Prison Regulations, reg. 49(2) to be strictly observed—prisoner with known mental disorder to be visited by medical officer when segregated or in solitary confinement

The applicant applied for leave to seek judicial review of the respondent's decisions refusing him certain treatment whilst in prison.

On his release from prison on licence, the applicant was prescribed by the prison doctor, at his request, an anti-depressant drug for use as a tranquillizer. The drug was not the usual anti-depressant prescribed for prisoners and had never been prescribed for the applicant whilst in prison.

The applicant was arrested the next day and remanded in custody. The drug he had been prescribed was confiscated on his arrival, under prison policy, on the basis that only medication prescribed by the prison doctor would be permitted within the prison. Instead he was prescribed an alternative tranquillizer. He was later granted bail on the condition that he seek medical assistance. He was prescribed a different drug by the hospital.

The applicant was imprisoned for another offence two days later, and again on his admission to prison the drug prescribed for him was confiscated. On the same day he caused a disturbance, deliberately cut himself and, when segregated from the other prisoners, displayed grossly abnormal behaviour. He was not seen by the prison doctor when segregated (though the duty doctor was informed of his injuries and advised on treatment) and was released from solitary confinement the next day. The respondent was familiar with the applicant and knew that he had self-mutilated on a number of occasions before.

The prison was informed by the Spanish prison authorities that the applicant had been diagnosed there as suffering from paranoid schizophrenia, and an independent psychiatrist later diagnosed paranoia and probably paranoid schizophrenia. The Gibraltar prison doctor continued to prescribe the approved tranquillizer for the applicant from time to time during his sentence. He gave evidence that having prescribed the original medication he had discovered that it contained an addictive substance, which was against prison policy. He was of the opinion that the applicant suffered from an untreatable personality disorder and that he therefore required no specific medication for it.

The applicant applied for various prerogative orders and a declaration relating to the respondent's decisions (i) not to allow him to be supplied with the anti-depressant drug originally prescribed for him by the prison doctor or that prescribed by the hospital, and (ii) not to provide him with adequate medical treatment.

He submitted that (a) he had been subjected to inhuman and degrading treatment, contrary to s.5(1) of the Gibraltar Constitution, resulting from (i) the respondent's policy of confiscating medication (with the likelihood of withdrawal symptoms) and (ii) the respondent's failure to protect his health and well-being whilst in custody; (b) the presence of a prison doctor did not relieve the respondent of his responsibility, as a part of his superintendence of the prison under s.6 of the Prison Ordinance, for ensuring that prisoners were attended by a suitably qualified and experienced medical practitioner (in this case a psychiatrist); (c) his mental condition on arrival had clearly been such that he should not have been segregated, and the respondent had specifically breached reg. 49(2) of the Prison Regulations, in that no doctor had attended him whilst in solitary confinement; (d) furthermore, having learnt that the applicant had been diagnosed by the Spanish prison authorities as schizophrenic, the respondent had provided no medical care other than a tranquillizer which merely sedated him; and (e) as a person performing public duties, the respondent's decisions were amenable to judicial review.

The respondent submitted in reply that (a) the applicant had not been subjected to inhuman or degrading treatment, since he had taken the original drug for only a day between his release on licence and re-arrest, and could not have suffered withdrawal symptoms; (b) the decision to prescribe the original drug had been taken by the prison doctor as an internal managerial decision in which the respondent took no part; (c) the policy of confiscating drugs from prisoners on their arrival was a sound one, as prisoners could not have free access to drugs of their choice and were not permitted to take addictive substances; (d) the applicant's medical treatment since the incident had been adequate and appropriate; he had displayed no signs of schizophrenia; and the report from the Spanish prison authorities was unreliable, as it had not been signed by a medical practitioner; and (e) having no medical expertise of his own, he had properly relied on the doctor's discretion as to how to treat prisoners requiring medication, and his actions were not amenable to judicial review.

Held, dismissing the application:

(1) The applicant clearly had a sufficient interest in the subject-matter of his claim to seek judicial review. Moreover, the Superintendent's decision to confiscate the applicant's medication was open to review, since the overall policy of taking away drugs from prisoners on arrival and only allowing them medication prescribed by the prison doctor was his responsibility and not that of the doctor. Any individual decision taken under that policy was a public law matter and not purely one of internal management. It would affect those members of the public committed to his custody and could disadvantage a vulnerable section of society having no ready means of redress. The potential dangers of confiscating necessary medication should be examined (para. 40; para. 42; para. 45).

(2) Whilst it was unfortunate that the applicant had been prescribed the original drug, he had not been subjected to inhuman or degrading treatment by the decision to confiscate it upon his re-admission the next day. The confiscation had occurred in pursuance of the Superintendent's policy and for no other reason, and the alternative medication had been prescribed because it was considered by the prison doctor to be more suitable. The applicant had failed to prove that he had become addicted to the original drug or that such a thing was possible within such a short time-scale. The same findings applied to the confiscation of the drug prescribed by the hospital (paras. 47–50).

(3) The Superintendent had failed to take proper care of the applicant in not ensuring that he was seen by the doctor whilst in solitary confinement and failing to discuss his behaviour with the prison doctor. Had a doctor examined the applicant, as was required under the Prison Regulations, he might have ordered that his mental health be assessed fully, rather than attributing the behaviour to his personality disorder (para. 51).

(4) Furthermore, the Superintendent had not done enough to ensure that the applicant received adequate treatment before his release. The applicant should not have been denied such treatment simply by reason of being in prison. The Superintendent should have taken account of the psychiatrist's diagnosis of paranoia. Although it was based on a single consultation and the court did not accept its findings unconditionally, the Superintendent should ensure that it was heeded if the applicant were imprisoned in future. The appropriate medication would be a matter for the doctor in consultation with the psychiatrist. However, inadequate treatment did not always amount to degrading treatment, and the court was not satisfied that the applicant had suffered inhuman or degrading treatment. The applications would be dismissed (paras. 52–55).

Cases cited:

(1) *R.* v. *Camp Hill Prison (Deputy Governor), ex p. King*, [1985] Q.B. 735; [1984] 3 All E.R. 897.

(2) *R.* v. *Home Secy., ex p. Dew*, [1987] 1 W.L.R. 881; [1987] 2 All E.R. 1049.
(3) *R.* v. *Home Secy., ex p. Herbage*, [1987] Q.B. 872; [1986] 3 All E.R. 209.

Legislation construed:
Prison Ordinance (1984 Edition), s.6:

> "The Superintendent shall, subject to the orders and directions of the Governor, exercise control and superintendence over the prison and the prison officers and may, with the approval of the Governor, issue standing orders . . . for the observance of the prison officers in the discharge of their duties."

Prison Regulations (1984 Edition), reg. 49(2): The relevant terms of this sub-regulation are set out at para. 24.

Gibraltar Constitution Order 1969 (Unnumbered S.I. 1969, p.3602), Annex 1, s.5(1): The relevant terms of this sub-section are set out at para. 22.

Rules of the Supreme Court, O.53, r.1(2):

> ". . . [T]he Court may grant the declaration or injunction claimed if it considers that, having regard to—
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> (a) the nature of the matters in respect of which relief may be granted by way of an order of mandamus, prohibition or certiorari,
> (b) the nature of the persons and bodies against whom relief may be granted by way of such an order, and
> (c) all the circumstances of the case,
>
> it would be just and convenient for the declaration or injunction to be granted on an application for judicial review."

D.G. Hughes for the applicant;
A.A. Trinidad, *Senior Crown Counsel*, for the respondent.

1 **PIZZARELLO, A.J.:** On July 20th, 1998 the applicant, Matthew Joseph Chichon, applied for leave to apply for judicial review which was granted and notice of motion was entered on July 29th, 1998. The facts as set out in the application for judicial review are these:

> "1. In or about November 1997, the applicant received a sentence of imprisonment at the magistrates' court, Gibraltar.
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> 2. On June 1st, 1998, the applicant was released on licence from the said sentence of imprisonment.
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> 3. Before his release, the applicant was prescribed the anti-depressant drug Nobritrol by the prison doctor.
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> 4. On June 2nd, 1998, the applicant was arrested by the Royal Gibraltar Police on various charges.

5. The applicant was subsequently remanded in custody on the said charges by the magistrates' court.

6. The applicant was placed in the custody of the Superintendent of Her Majesty's Prison, Gibraltar.

7. The Superintendent of H.M. Prison, Gibraltar, failed or refused to allow or permit the applicant to receive or be prescribed with the said Nobritrol.

8. On Friday, July 10th, 1998, the applicant was granted bail by the Supreme Court of Gibraltar.

9. On Saturday, July 11th, 1998, the applicant attended at St. Bernard's Hospital, Gibraltar, and was there prescribed another drug.

10. On Saturday, July 11th, 1998, the applicant was arrested on a charge of theft.

11. On Monday, July 13th, 1998, the applicant pleaded guilty to the said charge of theft in the magistrates' court, Gibraltar, and was sentenced to 14 days' imprisonment.

12. The applicant was placed in the custody of the Superintendent of H.M. Prison, Gibraltar.

13. The Superintendent of H.M. Prison, Gibraltar, his servants or agents took from the applicant the drug which he had been prescribed at St. Bernard's Hospital, as described in para. 9 above.

14. The Superintendent of H.M. Prison, Gibraltar has refused to allow the applicant to receive or be treated with the drug referred to in paras. 9 and 13 above.

15. The decision to refuse to allow or permit the applicant to receive or be treated with Nobritrol or another drug or drugs prescribed for him was one which the Superintendent of H.M. Prison, Gibraltar had no proper jurisdiction to make.

16. Alternatively, the decision to refuse to allow or permit the applicant to receive or be treated with Nobritrol or another drug or drugs prescribed for him was not one which a reasonable Superintendent of the prison could make."

2 Relief is sought in the following terms:

"(a) an order of certiorari to remove into the Honourable Court and to quash the decision of the Superintendent of H.M. Prison, Gibraltar, not to allow or permit the applicant to be supplied or treated with Nobritrol or another drug or drugs

prescribed for him and not to provide the applicant with any or any adequate medical treatment;

(b) a declaration that the Superintendent of H.M. Prison, Gibraltar, acted unlawfully and continues to act unlawfully in refusing to allow or permit the applicant to be supplied or treated with Nobritrol or another drug or drugs prescribed for him and/or by not providing the applicant with any or any adequate treatment;

(c) an order of prohibition to require that the Superintendent of H.M. Prison, Gibraltar not make any direction as to the drugs or other medical treatment which the applicant may receive and not prevent the applicant from receiving a drug or drugs which are prescribed for the applicant; and

(d) an order of mandamus to require the Superintendent of H.M. Prison, Gibraltar, to permit the applicant to receive Nobritrol and any other drug or treatment which may be prescribed for him and to provide the applicant with adequate treatment for his medical condition."

3 The first observation I would make is this: I find the facts stated in the application for leave and the affidavit sworn by Mr. Chichon in support of his application rather confusing, as it appears that the affidavit does not support what the application for leave says. Paragraph 7 of the affidavit states that on June 2nd he was arrested and "simply by virtue of being charged, [he] was held to be in breach of [his] licence and was taken back into custody," whereas para. 5 of the application states that after the arrest on June 2nd "the applicant was subsequently remanded in custody on the said charges." It is not a difference of major import and I shall set out below the facts on which I shall proceed.

4 From the correspondence I also note that by a letter dated August 6th, 1998, Mr. Hughes informed Mr. Trinidad of two things: (a) that the prison doctor had been on leave and that during the time he was absent no alternative medical care had been arranged; and (b) that the applicant alleged that the prison doctor "is now refusing to see Mr. Chichon about any complaint Mr. Chichon may have regarding his mental health." However, there are no such allegations made in any of the applicant's affidavits. Mr. Trinidad, in his letter of August 7th, 1998 to Mr. Hughes, refutes (b) and is silent on (a).

5 I also note that in his letter to Mr. Hughes of July 13th, 1999 the Superintendent expressed his intention "to establish all the facts related to this matter" but this has not been done other than in his affidavit in a very tangential manner.

6 These are the facts on which I shall proceed:

7 In or about November 1997, the applicant received a sentence of imprisonment at the magistrates' court. On June 1st, 1998 the applicant was released on licence and on the occasion of his release, he was prescribed for his use on release from prison the drug Nobritrol by the prison doctor, Dr. Adam Richard Galloway, who is a practitioner in the Group Practice Medical Scheme. The drug was not provided by the prison authority to the applicant. The applicant has never been prescribed Nobritrol whilst at prison in Gibraltar. Nobritrol is a Spanish medication and Dr. Galloway prescribed it as a mild tranquillizer at the request of the applicant.

8 Nobritrol, according to Dr. Galloway, contains a small quantity of benzodiazepine. It is similar to Valium. It is potentially abusable and addictive. It is a mild tranquillizer and not an effective anti-depressant. In Dr. Galloway's judgment, the applicant does require some tranquillizer at times and for this condition Dr. Galloway prescribes Melleril, which for this purpose is effective, safe and non-addictive. Neither the Superintendent nor any member of staff has anything to do with the Medical Officer's decisions concerning any suitable medication. In Dr. Galloway's opinion, the applicant is in no need of any specific medication, as he suffers from a personality disorder which does not respond to treatment by medication. This opinion is shared by Dr. Luis Manetto, admittedly with limited contact with the applicant, who is at present the Medical Officer for the prison. This was also the view of Dr. Cecil Montegriffo, the consultant psychiatrist who last saw the applicant several years ago.

9 On June 2nd, 1998 the applicant was arrested by an officer of the Royal Gibraltar Police and was remanded in custody by the magistrates' court and was placed in the custody of the Superintendent of H.M. Prison, Gibraltar. On his arrival, the Superintendent did not allow or permit the applicant to keep the said Nobritrol. The reason for this is that the Superintendent had adopted a policy to refuse to allow prisoners in his custody to be supplied with any medication save that prescribed by the prison doctor. In pursuance of this policy, prison officers withdrew from the applicant, as an incoming prisoner, any medication he had with him, including the Nobritrol.

10 On June 13th, 1998 the sentence of imprisonment in respect of which he had been released on licence expired. On Friday, July 10th, 1998 the applicant was released on bail granted by the Supreme Court. It was a condition of bail that the applicant seek medical assistance. On July 11th, 1998 the applicant attended St. Bernard's Hospital and was prescribed a drug the nature of which is unknown. It was not Nobritrol.

11 On Saturday, July 11th, 1998 the defendant was arrested on a charge of theft to which on Monday, July 13th, 1998 he pleaded guilty and was sentenced to 14 days' imprisonment. The applicant was duly placed in the custody of the Superintendent and on admission into prison he was, pursuant to the above-mentioned policy, divested of the drug which had been prescribed at the Hospital.

12 On July 13th, 1998 at about 7.20 p.m., the applicant caused a commotion by shouting and insulting the inmates around him. He was told to keep quiet, and at 7.25 p.m. he cut himself. The applicant refused treatment and the Superintendent authorized the transfer of the applicant to the segregation wing. The duty doctor, who was not the Prison Medical Officer, was informed and she advised that if the bleeding had stopped and he had refused treatment, to let him be. The applicant has a history of misconduct whilst in custody and has, according to himself, cut himself some 17 times.

13 The applicant states that whilst in solitary confinement he "became mentally disturbed and began to eat [his] own excrement." I accept the fact that he ate his own excrement. He was released from segregation the following day. He was not seen by the Medical Officer at any time when he was in solitary confinement.

14 The position of the Superintendent, as indicated in his letter of the July 13th, 1998 addressed to Mr. Hughes, who was acting for the applicant, is that—

> "the medical treatment of inmates and the prescribing of medicines [in prison] is a responsibility which lies entirely with the attending doctor. Inmates will continue to receive any medication prescribed to him by any qualified medical practitioner."

I take the expression "any qualified medical practitioner" to mean the doctor properly accredited to the prison as Prison Medical Officer exercising his/her functions as such.

15 Throughout this or other periods in custody in prison, the applicant has not been allowed to receive or be treated with either Nobritrol or the (unknown) drug which had been prescribed by the Hospital.

16 The applicant does not take his medication as prescribed with any consistency.

17 On August 4th, 1998 there was delivered to the Superintendent a document obtained by Mr. Hughes with the letter head of the prison "El Acebuche," Almeria, in Spain. The translation reads:

> "Dear Colleague,
>
> As we arranged, I enclose the information regarding the health of prisoner Matthew Chichon. The said patient was diagnosed as

suffering from paranoid schizophrenia when he arrived and while in this institution, received the following treatment:

Binogan drops	30-0-30
Haloperidol	20-20-20
Valium	101-1-1
Akineton retard	1-0-1
Etamina	0-0-1

Almeria 16.7. 98."

18 On December 18th, 1998 the applicant was diagnosed by Dr. M.F. Hussain, M.B., R.F.C.S., D.P.M., Consultant Psychiatrist, as suffering from paranoia, and the Superintendent was informed.

19 The Superintendent has at no time during the applicant's last period of incarceration caused him to be referred for a medical opinion as to the state of his mental health.

20 The constituents of Nobritrol assumed some importance and I have set out in para. 8 what Dr. Galloway thought about it. On January 29th, 1999, William Guillem, a registered pharmacist and currently the prescribing adviser to the Gibraltar Health Authority, described Nobritrol. Nobritrol consists of a mixture of amitriptyline hydrochloride and medazepam and is only manufactured in Spain. It has never and does not now possess a British or European product licence, and within the last two months Mr. Guillem has notified all pharmacies and general practitioners that medicinal products which do not possess either a British or a European product licence should not be prescribed or dispensed in Gibraltar.

21 Louis Calvente, also a registered pharmacist, said of Nobritrol that it is a drug, manufactured by the Swiss pharmaceutical company Roche, which is licensed in Spain. He agreed with Mr. Guillem as to its active ingredients. He described amitriptyline hydrochloride as an anti-depressant which is contained in many other preparations. In so far as it is an anti-depressant there are withdrawal symptoms, and he referred to Martindale, *The Extra Pharmacopoeia*, 30th ed., at 243 (1993):

> "**Antidepressant withdrawal.** All antidepressants should generally be withdrawn gradually in order to prevent withdrawal symptoms. It should be remembered that a characteristic feature of several types of depression is that remissions and relapses are likely to occur and re-introduction of therapy may become necessary."

As for medazepam, that is a benzodiazepine and in addition to Nobritrol is contained in other preparations. As for Melleril that is a thioridazine or thioridazine hydrochloride, and is a phenothiazine neurolepic. It commonly produces side-effects, hypertension, delirium and agitation, and in his opinion the side-effects of phenothiazines are of more serious concern than those of Nobritrol. He stated:

> "If I were to describe the effects of Nobritrol and thioridazine [in Melleril] in layman's terms, I would say that Nobritrol would calm the patient, whereas thioridazine would make the patient what a layman would describe as 'groggy.'"

He agreed that Nobritrol is potentially addictive. As for Melleril, he drew attention to *Martindale* (*op. cit*., at 573), which suggests that "symptoms resembling the withdrawal symptoms of dependence [on thioridazine] have been seen following the abrupt withdrawal of phenothiazines from patients receiving prolonged maintenance therapy." Thioridazine is listed in *Martindale* for use for the treatment of schizophrenia, mania and other psychoses. Nobritrol, he said, has been prescribed and is still prescribed by doctors in Gibraltar whether from the Group Practice Medical Scheme or privately. He stated that Nobritrol is convenient for use, as it is the only preparation which contains both amitriptyline hydrochloride and medazepam, and a substitute for Nobritrol would require two different drugs to be prescribed at the same time.

22 Mr. Hughes's submission was that under the Gibraltar Constitution, s.5(1): "No person shall be subjected to torture or to inhuman or degrading punishment or other such treatment," and if, by reason of the Superintendent's policy or failure to adhere to the provisions of the Prison Ordinance, the applicant has suffered such treatment, then the policy which has led to that is unlawful and the Superintendent, as the person appointed for the control and conduct of the prison, is responsible because he exercises control and superintendence over the prison under s.6 of the Prison Ordinance, and that includes the inmates and prison officers.

23 He submitted that the superintendence covers the overseeing of the prisoners' well-being and health and the Medical Officer's responsibility in respect of the health of the prisoners does not absolve the respondent from being under the same duty. In order to comply with his duty to care for the health of prisoners, the Superintendent is obliged to ensure that any medical attention needed by any prisoner which cannot reasonably be provided by the Medical Officer is provided by other means. The Medical Officer's duty to care for the health of prisoners is subject to the authority of the Superintendent and if the Superintendent failed to ensure that the applicant was attended by a suitable, qualified and experienced medical practitioner in consonance with his needs (in this case, he submitted, a qualified and experienced psychiatrist), then that constitutes a breach of his duties and is not merely a matter of internal management.

24 He argued that if the applicant has been prescribed a drug then it should not be withdrawn: to do so is degrading. If he has been diagnosed as a schizophrenic, and in this knowledge he is placed in solitary confinement, that is both degrading and inhuman. It becomes doubly so

and unlawful if he is put into solitary confinement without medical inspection. The Superintendent was clearly in breach of reg. 49(2), which requires the Medical Officer to "examine sick prisoners and prisoners in solitary confinement . . . not less then once in each day" and the appellant had been in solitary confinement for two days, albeit not full days. If the Superintendent knows of, or if there is any information which credibly indicates, a medical condition which is not within the competence of the Prison Medical Officer (who is a general practitioner), then it is the Superintendent's duty to provide for such medical treatment.

25 Mr. Hughes argued that in the case of the applicant there was evidence provided to the Superintendent on August 4th, 1998 which ought to have alerted him to the fact that the applicant's medical condition may have deteriorated from that previously known to him (from Dr. Galloway and Dr. Montegriffo that the applicant suffered from a personality disorder). He should have ensured that the applicant was enabled to receive that treatment. That was a duty which lay upon him irrespective of the obligations which lay on the Medical Officer in this regard.

26 The Superintendent did nothing and it was not until after the applicant was attended by Dr. Hussain in prison that his report *ex post facto* revealed clearly that the Superintendent was in breach of his duties because he had done nothing and did nothing while the applicant was in prison, and this notwithstanding his letter to Mr. Trinidad for onward transmission to the Superintendent on December 23rd. Mr. Hughes argued that the fact that the applicant had cut his wrists on July 13th and that night, while in solitary confinement, had eaten his excrement, should by itself have alerted the Superintendent that there was something more than usually wrong with the applicant.

27 So, Mr. Hughes submitted that the decisions of the Superintendent (i) to take away medicine away from prisoners on admission, (ii) to take away Nobritrol from the applicant, (iii) not to let prisoners have addictive drugs, (iv) not to let the applicant have Nobritrol, which has an anti-depressant element and cannot be withdrawn quickly, and (v) not to let him have medication other than Melleril which is a tranquillizer and is a phenothiazine, amount to treatment which is degrading and inhuman because it is not the right treatment for the applicant. These facts, he argued, give the applicant *locus* to move for judicial review. Judicial review lies because this is a matter which affects a person performing public duties and this is a matter of public law and not a matter of internal prison house-keeping. He also raised constitutional issues. He referred me to *R.* v. *Home Secy., ex p. Dew* (2); *R.* v. *Deputy Governor of Camp Hill Prison, ex p. King* (1); and *R.* v. *Home Secy., ex p. Herbage* (3).

28 Mr. Trinidad in reply submitted that it was necessary to get at the facts in order to consider the three basic issues raised by Mr. Hughes,

which he identified as follows: (i) the policy of taking away medication from incoming prisoners as soon as they arrive, (ii) the correctness of taking Nobritrol away from the applicant, and (iii) the allegation that the applicant did not receive adequate medical treatment from June 1998 to January 1999 when he was discharged from prison.

29 As for the material facts, Mr. Trinidad suggested that the chronology went like this:

1. The applicant was sentenced to 11 months by the magistrates' court in November 1997.

2. He was released on June 1st, 1998.

3. Nobritrol was prescribed for him.

4. He was re-arrested on June 2nd, 1998.

5. He remained in custody in prison until July 10th, when bail was granted.

6. He was re-arrested on July 11th, 1998.

7. He pleaded guilty on July 13th and was sentenced to 14 days.

8. In prison on July 13th, he cut his wrists and forced the Superintendent to segregate him pursuant to prison regulations.

30 On the basis of that scenario, Mr. Trinidad submitted first that the application is misconceived because it was the decision of Dr. Galloway, the Medical Officer, whether or not to prescribe Nobritrol and so it was an internal managerial decision. It was also a decision in which the Superintendent played no part (see *R.* v. *Home Secy., ex p. Dew* (2) and *R.* v. *Deputy Governor of Camp Hill Prison, ex p. King* (1)), and if there is any complaint it should go by way of writ and not judicial review. This is not a matter of public law. If the applicant has a complaint, that is a managerial matter and his remedy is in damages and not judicial review. Secondly, the court should look first to see if there is a breach of the Constitution, and then look at *R.* v. *Home Secy., ex p. Herbage* (3) for guidance. If the court thinks the matter is one of inhuman or degrading treatment then it may consider whether judicial review lies, but only then. After that hurdle has been surmounted, then the court should consider whether the relief sought is justified, and he submits that it is not, because what the applicant wants has to do with future actions.

31 Mr. Trinidad expanded his submissions. As for the submission that the application is misconceived, the applicant relies on the *Wednesbury* principle, described in 1 *The Supreme Court Practice 1999*, para. 53/14/31, at 907, as one of the grounds on which judicial review may be granted. Assuming that the policy decision is that of the Superintendent,

the Superintendent properly relies on the Medical Officer's advice. In matters of health, the Medical Officer's advice is crucial since the Superintendent knows nothing of medicine. There is nothing wrong, Mr. Trinidad submitted, in a policy which calls upon prison officers to take away all medication from incoming prisoners. These are taken away and the Medical Officer examines the prisoner as soon as possible after admission and prescribes adequate medication which may be different from that which a prisoner brings with him, and it is that which is given to the prisoner.

32 According to Mr. Trinidad, the allegation that the applicant suffered inhuman or degrading treatment by having had Nobritrol taken away from him and not having it prescribed falls away when it is appreciated that the applicant had been in prison from November 1997 until January 1999 when he was released, and throughout all that time he was at liberty only for two days (*i.e.* on the two occasions June 1st–2nd, 1998 and July 11th, 1998). It cannot be said, and it has not been shown on the affidavit evidence, that the applicant had consumed so much Nobritrol in those two isolated days as to be in any danger of suffering withdrawal symptoms. And in any case, even if Dr. Galloway had prescribed Nobritrol on that one occasion, it was at the applicant's request and Dr. Galloway changed his mind the next day when the doctor found that Nobritrol contained a small amount of benzodiazepine which is potentially addictive and open to abuse and, following prison policy, prisoners are not prescribed addictive drugs.

33 Degrading and inhuman treatment may describe a situation when drugs are withdrawn quickly, but those are not the facts of this case. At the most, the applicant was ingesting Nobritrol for 24 hours. He had been on Melleril for a substantial time. In so far as the period from July 13th, 1998 to January 1999 is concerned, there was nothing to suggest to the Superintendent that the applicant was suffering from paranoid schizophrenia. What information the Superintendent had was the opinion of Dr. Montegriffo, the consultant psychiatrist, that the applicant suffered from a personality disorder, and Drs. Galloway and Manetto's views were to the same effect and that Melleril was adequate. There was nothing at the time of segregation (not solitary confinement, as is alleged) that the Superintendent had done or failed to do which could be criticized. What had he done wrong? The applicant was well known to him, Dr. Montegriffo—the consultant psychiatrist—had known him for years and the applicant was always a font of disorder.

34 The evidence, Mr. Trinidad submitted, is overwhelmingly in favour of the Superintendent. After that episode the Spanish document came to the Superintendent's attention. What weight could be given to a handwritten missive which did not even purport to be signed by a medical

practitioner? It is not known who signed it. As for Dr. Hussain's report, that did not come into existence until December 1998. It is itself not very definite and was compiled by a doctor who only saw the applicant once, as opposed to the many years that Dr. Montegriffo has been involved.

35 There is little evidence that Nobritrol is the proper drug for the applicant: Dr. Hussain says so, but also suggests that Melleril is not wrong. Indeed, says Mr. Trinidad, Dr. Hussain suggests that Melleril is good, as does, he suggests, Mr. Louis Calvente, when he says thioridazine (contained in Melleril) is listed "for the treatment of schizophrenia, mania and other psychoses." There is no link to suggest that the absence of Nobritrol contributed to the applicant's action of slashing his wrists, which he had done 17 times before. After the incident of July 13th whilst on Melleril, no abnormal report has been reported and, counsel submits, that is indicative that the medical treatment he received is adequate.

36 Mr. Hughes submitted that any suggestion that the applicant was adequately looked after by a doctor is perverse. The cases of *R.* v. *Home Secy., ex p. Dew* (1) and *R.* v. *Deputy Governor of Camp Hill Prison, ex p. King* (2) are very different. When he cut his wrists the applicant was not seen by the duty doctor. That is clear from the report of prison officer Linares. When he was placed in solitary confinement, he was not seen by a doctor, contrary to the provisions of reg. 49(2). When he ate his own excrement he was not examined to check on his paranoia. What more did the Superintendent need to alert him that all was not well than that episode? It is both inhuman and degrading treatment that his drug was taken away from him, that he was placed in solitary confinement and put into a position where he ate his own motions. It is surely not enough for the Superintendent to stand on the opinions of Drs. Galloway and Manetto with all these factors at his command. Then came the report of Dr. Hussain, and still the Superintendent did nothing. That, according to Mr. Hughes, was playing with a man's life, and that was inhuman and/or degrading.

37 For all Mr. Trinidad's protestations that the applicant has been under proper medical attention, said Mr. Hughes, there is no evidence as to whether, and if so when, the applicant was seen by a doctor. And, he said, the argument that because the applicant has behaved while in prison is no argument, because a crucial complaint is that he is not receiving proper treatment. The effect on the applicant of the drug Melleril is indeed to make him groggy. He is being sedated into a state of medicated quietness, as is explained by Mr. Louis Calvente. It is simply the case that where the applicant is in prison, he has to be kept quiet and Melleril is the answer to that. That is not effective treatment and that comes within the spirit and terms of the words "inhuman or degrading" contained in the Constitution. As for the policy of withdrawing all medication from the prisoners as

they are admitted into prison, that must be wrong even if that medication is addictive.

38 There is a conflict as to what medication the applicant was receiving before June 1st, 1998 and after June 2nd, 1998. In respect of the period before June 1st, 1998, the applicant states that he was prescribed Prozac but it did not agree with him and he ceased to take it. After June 2nd, 1998, by a letter of July 9th, 1998, Mr. Hughes writes that he is instructed to say that the applicant has been supplied with Prozac and Melleril in substitution for Nobritrol. As for the period before June 1st, the respondent's affidavits are silent on this. After June 2nd, the respondent's affidavits, in essence, say "no Nobritrol, only Melleril." The applicant states he did not take Prozac and there is no evidence that Prozac was administered after June 2nd, 1998. It is my view that since June 1998, the applicant has been supplied with Melleril only and that the position before June 1st, 1998 is not significant.

39 I proceed to examine the application:

Is the applicant a person who has sufficient interest in the matter to which the application relates?

40 I do not harbour any doubts on this: He has such an interest.

May judicial review lie against the Superintendent in this matter?

41 The applicant says that it may because the health of the prisoners is his responsibility, over and above that of the Medical Officer, and in so far as this case is concerned it goes further because it leads to a breach of s.5 of the Constitution. Mr. Trinidad submits that medical attention is in the hands of the Medical Officer, in whose decisions on medical matters the Superintendent does not interfere.

42 In the circumstances of this case, my view is that there is a policy of taking away all medicines in the possession of an incoming prisoner, and that policy is the responsibility of the Superintendent. He may know little of medicine but that is a blanket policy which cannot, in view of the terms of the Ordinance, be left in the hands of the Medical Officer. Any decision taken as a result of that policy is not simply an internal managerial matter, since it affects such of the public as are committed into the Superintendent's custody. There are public duties involved.

43 Mr. Trinidad submits that the policy is *Wednesbury* reasonable because first, a prisoner cannot have free access to whatever drugs he likes; it must be controlled by the Medical Officer, and secondly, prison policy dictates that prisoners are not prescribed addictive drugs. These lead to problems with regard to the prisoner himself and with regard to others. For the prisoner himself, their addictiveness makes him high and

want more and soon abuse them. With respect to the others, there is the probability that they will be distributed to other inmates and intoxicate them.

44 Mr. Hughes protests that that can lead to inhuman or degrading treatment because the sudden withdrawal of a drug has an affect on the user which may lead to abnormal behaviour, resulting in his being treated in a manner which is inhuman or degrading. If, for example, a prisoner were on morphine, why should his medication be taken away from him? It is inhuman or degrading for that to be done to him. To go to the other end of the scale, an asthmatic has to have his spray close to hand, and to take that away would be inhuman or degrading and might lead to severe illness or death.

45 I have found in para. 9 above that the policy is to remove medicines from prisoners on arrival and to allow prisoners to take only that medication which is prescribed by the Medical Officer. The arguments ranged wider because Mr. Trinidad argued that prison policy dictated that prisoners are not prescribed addictive drugs. However, I must point out that there is no evidence in the affidavits that the policy is to that effect and my finding does not extend to this. Nevertheless, I consider that the policy as I have described it is capable of review by this court because it is so wide that the dangers Mr. Hughes describes cannot be under-estimated and it will affect and may disadvantage a section of the public whose capabilities of redress are very circumscribed. It is my view that the decision of the Superintendent is open to review.

On what grounds may the decision be impugned?

46 There are four episodes which have to be looked at: (a) taking away the applicant's Nobritrol on his admission into prison on June 2nd; (b) taking away on July 13th, 1998 the drug prescribed by the Hospital; (c) the applicant's not having been seen by the Medical Officer pursuant to reg. 49(2) when he was placed in solitary confinement; and (d) his failure to have suitable treatment generally in accordance with his mental state, and in particular once it was brought to the Superintendent's attention (by delivery of the Spanish prison certificate on August 4th and on being provided with a copy of Dr. Hussain's report in December) that the applicant might be suffering from paranoid schizophrenia.

47 As for June 2nd, 1998, it is a matter of regret that Dr. Galloway succumbed to the request of the applicant to have Nobritrol prescribed. Mr. Hughes questioned the doctor's motives in explanation for his decision. The question was: Did the doctor change his view for the reasons he gives in his affidavit or is that an excuse, bolstered by the opinion of Mr. William Guillem, to justify taking away the Nobritrol for no good reason? How can he prescribe one day and change his mind the

next? At least, that is how I understood Mr. Hughes's argument on this aspect.

48 I dismiss that suggestion. The Nobritrol incident was over and done with in a matter of days, and other than that there was a policy which was adhered to, there is nothing to suggest that the applicant was subject to torture or inhuman or degrading treatment as a result of that policy. The medicine was simply taken away and he was thereafter prescribed Melleril. At that time, that was considered—reasonably in my view, and despite what the applicant might think—to be the right prescription and there was nothing to indicate otherwise. It was clearly then a matter for the Medical Officer, as part of the daily managerial duties which the Superintendent quite properly would leave to him.

49 Mr. Trinidad has alluded to the situation that one can hardly become addicted to Nobritrol in one day and that no medical evidence has been led on that with respect to the applicant. I agree with both observations. I do not consider that Mr. Louis Calvente's affidavit amounts to any sufficient evidence to help the applicant and Dr. Hussain does not help for the reasons I shall explain later on. All Mr. Calvente says in his affidavit is that "the symptoms resembling the withdrawal symptoms of dependency have been seen in patients receiving prolonged maintenance therapy." That is very vague and in any case deals with prolonged maintenance therapy. Furthermore, there is singular lack of detail in respect of the dose that was prescribed. For how long was the applicant without medication? The least the applicant should have done, in keeping with his duty of full and frank disclosure, was to set out the intervals and dosages of that prescribed drug. Judicial review does not lie here.

50 As for July 13th, 1998, for the same reasons, judicial review does not lie.

51 As for solitary confinement on July 13th–14th, the applicant was, pursuant to the Prison Regulations, "placed in segregation for the maintenance of good order and for his own safety where he could be controlled and supervised" (see Mr. Enriles' affidavit). Mr. Trinidad sought to argue that segregation does not amount to solitary confinement. In my view, what the applicant endured was solitary confinement, and the applicant should have been seen during his period of confinement by the Medical Officer. There is little to be done on this aspect now at this stage, but it is very important to take note of the reasons why the applicant was put into solitary confinement and of his behaviour therein. A doctor examining him at the time might have thought that the applicant's mental health required to be investigated, rather than attributing his acts to his personality disorder. That a similar episode did not happen again might be explained by the effect of Melleril, as submitted by Mr. Hughes, but the point is that the Superintendent knew of this episode. I will assume that

he did not discuss the matter with the Medical Officer, since there is no evidence of it, and that, in my view, amounts to a failure on the part of the Superintendent to look after the well-being of the applicant.

52 As for the period from July 1998 to the applicant's release, I would agree with Mr. Hughes that if the applicant is not receiving the proper and adequate treatment that may amount to degrading treatment, but not every wrong treatment will amount to that. I am not persuaded that the applicant was the victim of inhuman or degrading treatment.

53 I do not accept Dr. Hussain's report unconditionally, though I ascribe no fault to the doctor, who has seen the applicant once, and his information appears to come principally from the applicant alone. Parts of the report present a factual situation which is not correct. It is evident that the doctor believed the applicant was prescribed and was supplied with Nobritrol in prison: "It was prescribed for Mr. Chichon as [he] showed features of depressive illness along with the anxiety state." This was not so. In his affidavit, Chichon says he was never allowed Nobritrol in prison. Then the doctor says "at one stage when he was denied *this* medication and given tablets—Prozac," but the applicant clearly states (as I understand his affidavit) that he gave up Prozac well before June 1st. I accept, of course, the doctor's view that "the medical condition that Mr. Chichon suffers from is paranoia and probably paranoid schizophrenia . . . and needs ongoing medical attention," and if, in his professional opinion, the treatment prescribed for Mr. Chichon "should have been anti-psychotic, anti-depressant, anxiolytic medication in the appropriate dose over a fair length of time so that his condition does not relapse," that would be for the Superintendent to take on board as well, of course, as the Medical Officer. But the exact medication must be for the Medical Officer in consultation with the consultant psychiatrist.

54 The Superintendent's duty goes to the extent that a prisoner should be adequately treated. The applicant should be in no worse a position to receive adequate medical treatment because he is in prison. The Superintendent did not do enough in the period I am considering. Should the applicant unfortunately find himself in prison again it will be the Superintendent's duty to ensure that he receives adequate treatment, *i.e.* the Superintendent must ensure that Dr. Hussain's opinion does not go unheeded.

55 The motion for order of mandamus, prohibition or certiorari is refused, and having regard to the provisions of O.53, r.1(2)(a)–(c) and the views I have expressed, I am of the opinion that it would not be just and convenient to make the declaration in the terms prayed for.

Application dismissed.