

OUTER HOUSE, COURT OF SESSION

P35/146/99

OPINION OF LORD CAMERON OF
LOCHBROOM

in Petition of

ROSS DOUGLAS JAMIESON, A.P.

Petitioner;

for

JUDICIAL REVIEW OF A DECISION
OF THE CRIMINAL INJURIES
COMPENSATION BOARD REFUSING
TO AWARD HIM COMPENSATION
IN RESPECT OF INJURIES
RECEIVED BY HIM

Petitioner: Smith; Drummond Miller, W.S.
Respondents: Bevan; Solicitor to the Scottish Executive

12 November 1999

The petitioner seeks declarator that the Criminal Injuries Compensation Board ("the respondents") unreasonably exercised their discretion by refusing to make an award of compensation to the petitioner, for an order reducing their decision dated 18 June 1997 and for a remit back to the respondents to reconsider whether the petitioner should be granted an award. The petitioner applied in December 1994 for compensation for personal injury sustained by him in an incident occurring on 16 April 1994. In terms of a decision of a single member of the respondents dated 22 January 1996 the claim was refused in terms of paragraph 6(c) of the Criminal Injuries Compensation Scheme. The petitioner applied for the matter to be considered by two members of the respondents. That hearing took place on

18 June 1997. It is the respondents' decision in relation to that hearing which is attacked in the present petition.

The petition as presented proceeded upon two separate grounds but at the end of the day counsel for the petitioner argued solely on the basis that the decision of the respondents was flawed in that it had failed to have regard to the fact that the petitioner, though convicted of assault upon his assailant, was absolutely discharged in respect of the matter. The second ground which averred that the respondents had failed to take into account a factor which they ought not to have, namely a suggestion in the single member's decision to the effect the petitioner was responsible for a "serious assault" upon the petitioner's assailant, was given up.

A fair reading of the written reasons for the decision of the respondents makes clear that the respondents had the benefit of hearing evidence from a number of witnesses who included the petitioner himself and three other lay persons who were eye-witnesses to varying degrees of the events in which an assault upon the petitioner himself and subsequently the assault to which the petitioner pleaded guilty, took place. In addition the respondents had evidence from a police witness as to what information he had received from another lay person, the condition of the petitioner when detained, the nature of the information which the petitioner gave to the police at the time and the manner in which it was given. The respondents also had medical evidence, including evidence in the form of a report prepared from contemporaneous case records upon the petitioner's injury. Lastly the respondents were advised as to the extent of the injuries sustained by the petitioner's assailant, Stuart Nicol, and of the fact that the petitioner was initially charged with attempted murder and subsequently charged along with five others with assault upon Nicol. The respondents were also advised that the assault to which the petitioner pleaded guilty took place after others had assaulted

Nicol. The respondents also recorded that on the petitioner's behalf it was "resubmitted that his conduct came at the end of the incident, that he acted completely out of character and was only 16."

The facts to be derived from the evidence were, of course, a matter for the respondents to determine upon a consideration of the credibility and reliability of the evidence before them. The respondents' determination is recorded as follows:

"(The Board) found that the applicant and his friends Mr. Short, Mr McAllister and Mr. Henderson, had all been economical with the truth and having regard to the police evidence and the contemporaneous medical evidence did not accept that after attacking Scott Nicol, the applicant was staggering and incoherent as the witnesses suggested. It was satisfied that although the applicant had been hit on the head the evidence did not support his claim that he had been knocked out. The Board was satisfied that after he was assaulted, the applicant made no attempt to contact the police but went to the town centre to find his assailant, intent upon revenge. When he found him, although on his own admission Scott Nicol had already been assaulted and had horrific injuries, he kicked him twice. The applicant was very loathe to admit that he had kicked Scott Nicol but on all the evidence, including his own Guilty plea the Board was satisfied that he had done so. It was also satisfied that he deliberately chased after him to revenge himself and was fully aware of what he was doing and that it was wrong.

The Board had regard to the applicant's young age, his previous good character and the fact that he had been assaulted first. It also had regard to Paragraph 30(e) of the Guide to the Scheme and having considered all the evidence concluded in the exercise

of its discretion that his conduct was such that a full or reduced award should not be made.”

Mr Smith for the petitioner contended that the respondents had given no and certainly no compelling reason for failing to take account of the sheriff's decision to grant the petitioner an absolute discharge in relation to the guilty plea to assault. He submitted that in the present case it was also not clear that the petitioner was in fact aware that Nicol had “horrific” injuries when he assaulted him. But the statement of evidence given before the respondents records that the petitioner said that he saw the attack on Nicol “and said he had horrific injuries”. Nicol was at the time lying on the ground and was so when the petitioner kicked him. The respondents' decision makes clear that they dealt with the matter upon the basis of the evidence before them. They were made fully aware of the mitigating circumstances upon which, it may be assumed, the sheriff granted an absolute discharge. But that sentence was imposed in relation to an attack which took place after and was distinct from an earlier assault upon Nicol to which certain of the petitioner's co-accused pleaded guilty. The sentence did not take away from the facts as found by the respondents that the assault upon Nicol was a quite deliberate one motivated by revenge and that when the petitioner was fully aware of what he was doing and that it was wrong. It was accepted that the respondents had a discretion in terms of paragraph 6(c) of the Scheme to withhold compensation if they considered that it is inappropriate to grant any award having regard to the conduct “before, during or after the events giving rise to the claim...” The claim arose out of the assault upon the petitioner by Nicol. But the respondents were entitled to look to the conduct of the petitioner after the assault just as they did in the present case. It is not possible to speculate upon the reasons for the decision of the sheriff in determining what action to take in relation to the plea. Nothing in the Scheme requires the respondents to have particular

regard to the matter of the subsequent sentence. It is however proper to note that the respondents specifically took into account mitigating features which may have led the sheriff to adopt the course that he did. But the respondents were not determining sentence for a criminal offence. They were concerned with the appropriateness of making an award of compensation in relation to the petitioner's conduct in the events which were the subject of evidence before them. It was not suggested that any of these events were not relevant to the respondents' decision. As counsel for the respondents pointed out, paragraph 25 of the Scheme requires the petitioner "to make out his case at the hearing, and where appropriate this will extend to satisfying the Board that compensation should not be withheld or reduced under the terms of paragraph 6...." The respondents have, in my opinion, given quite clear and specific reasons for not being satisfied that a full or reduced award should be made. Accordingly, their refusal to make any award on the ground of the petitioner's conduct under paragraph 6(c) cannot be attacked as unreasonable in the sense in which that word is used in *Wordie v Secretary of State for Scotland*.

In the whole circumstances I shall sustain the plea-in-law for the respondents, repel the plea-in-law for the petitioner and dismiss the petition.