

William Beggs v (1) Scottish Legal Aid Board and (2) Scottish Information Commissioner

Case Ref No : P1259/18

Date of Hearing: 12 January 2022

Division: Extra

Agents for the petitioner: The Prison Lawyer/Drummond Millar (Edinburgh agents)  
Agents for the first respondent: Scottish Legal Aid Board  
Agents for the second respondent: Anderson Strathearn

Case Description

This reclaiming motion concerns a petition for the judicial review of a decision of the Scottish Legal Aid Board dated 19 September 2018 to refuse an application made by the petitioner for legal aid to allow him to appeal to the Supreme Court. By interlocutor dated 14 July 2020, the Lord Ordinary refused to (i) reduce the Board's decision refusing legal aid and (ii) grant declarator that the Board's refusal to grant legal aid for an appeal to the Supreme Court was unreasonable. The petitioner reclaims.

The petitioner was convicted of murder in 2001 and is serving a sentence of life imprisonment. He has maintained and continues to maintain that he did not commit the offence of which he was convicted. He has initiated various petitions for judicial review whilst imprisoned. The current petition relates to freedom of information requests made by petitioner to Strathclyde Police and, subsequently, Police Scotland for information in support of his claim that a miscarriage of justice has occurred. Those requests were refused and in 2011 the petitioner applied to the second respondent for a review of the police's refusal to disclose the requested information. The Commissioner upheld the decision to withhold the information. An appeal against the Commissioner's decision was refused by the Inner House in 2014. Since then, the petitioner has applied three times for legal aid to appeal to the UK Supreme Court. Each application has been refused by the first respondent and each refusal has been followed by an application by the petitioner for judicial review of the Board's decision. The petition relates to the most recent application, refused on the ground that the petitioner had not exhausted the review procedure before the Commissioner. At the time of the hearing before the Lord Ordinary, a review of the second application to the second respondent was outstanding.

The Lord Ordinary considered that in light of the relevant authorities with regards applications for legal aid (*Beggs v Scottish Legal Aid Board* [2018] CSOH 13, and its summary of *K v Scottish Legal Aid Board* 1989 SC 21, *Venter v Scottish Legal Aid Board* 1993 SLT 147 and *McTear v Scottish Legal Aid Board* 1997 SLT 108), the petitioner failed to make out a case that the decision to refuse legal aid was irrational or unlawful. He expanded on his reasoning at paras.[24]-[28].

The petitioner submits that the Lord Ordinary erred in law. He advances three grounds:

1. The Lord Ordinary erred in finding that an application for legal aid does not engage a 'civil right' within the meaning of Article 6 of ECHR and in his interpretation of *Masson and Van Zorn v. Netherlands* (1996 22 EHRR 491).
2. The Lord Ordinary erred in finding that the case was not important to wider society. The point raised in the petition is of constitutional importance in that it relates to Freedom of Information requests. It is submitted that the Inner House has inverted the general entitlement under the statute by requiring the requester to bear the burden of establishing the public interest in disclosure.
3. The Lord Ordinary erred in finding that the refusal to grant legal aid did not constitute a breach of his right to a fair trial under Article 6 ECHR. The question of the disclosure of exculpatory material is linked to the right to adversarial proceedings and to the fundamental principle of equality of arms. Where the material contains relevant items, failure to make those items available to the defence for inspection would constitute a refusal of facilities necessary for the preparation of the defence and therefore amount to a violation of Article 6. The right to exculpatory material persists post-trial.