IN THE SUPREME COURT OF THE UNITED KINGDOM

27 NOVEMBER 2018

Before:

Lady Hale
Lord Reed
Lord Kerr

R (on the application of Conway) (Appellant) *v*
Secretary of State for Justice (Respondent)

AFTER CONSIDERATION of the application filed on behalf of the Appellant seeking permission to appeal the order made by the Court of Appeal on 27 June 2018 and of the notice of objection filed by the Respondent

THE COURT ORDERED that

(1) permission to appeal be REFUSED for the reasons attached

(2) the Appellant pay the Respondent's costs of the application and, where the Respondent applies for costs, the costs to be awarded be assessed.

Registrar
27 November 2018

R (ON THE APPLICATION OF CONWAY)
v
SECRETARY OF STATE FOR JUSTICE

APPLICATION FOR PERMISSION TO APPEAL

1. Mr Noel Conway applies for permission to appeal to the Supreme Court against the dismissal of his appeal from the decision of the Divisional Court refusing his application for a declaration that the ban on assisting suicide, contained in section 2(1) of the Suicide Act 1961, is incompatible with his rights under article 8 of the European Convention on Human Rights.

2. Mr Conway suffers from motor neurone disease, a neurological disease which attacks the nerve cells responsible for voluntary muscle movement. He is now a wheelchair-user and requires ever-increasing levels of help with everyday life. In particular, he finds it increasingly difficult to breathe without mechanical assistance in the form of non-invasive ventilation (NIV). He now requires NIV for around 23 hours a day. When it is predicted that he will have less than six months to live, he would like a medical professional to be able to prescribe him medication which he himself can choose to take to bring his life to an end when and where he would like. Assisting him to commit suicide in this way is currently a serious criminal offence carrying a maximum sentence of 14 years' imprisonment.

3. Mr Conway could bring about his own death in another way, by refusing consent to the continuation of his NIV. That is his absolute right at common law. Currently, he is not dependent on continuous NIV, so could survive for around at least one hour without it. But once he becomes dependent on continuous NIV, the evidence is that withdrawal would usually lead to his death within a few minutes, although it can take a few hours or in rare cases days. The evidence from the specialist in palliative care who is looking after him is that medication can be used to ensure that he is not aware of the NIV being withdrawn and does not become uncomfortable and distressed.

4. However, Mr Conway does not accept that the withdrawal of his NIV under heavy sedation would be a dignified death. He does not know how he would feel, whether he would experience the drowning sensation of not being able to breathe, whether he would be able to hear his family and feel their touch. Taking lethal medicine would avoid all these problems. In his view, which is shared by many, it is his life and he should have the right to choose to end it in the way which he considers most consistent with his human dignity.

5. The question for this panel is whether his case raises an arguable point of law of general public importance which ought to be heard by the Supreme Court at this time. No-one doubts that the issue is of transcendent public importance. It touches us all. We all have to experience the death of people about whom we care. We all have to contemplate our own death.

6. No-one doubts that the issue raises arguable points of law. The difference between letting someone die and taking active steps to bring about their death has been central to the common law for centuries. Some argue that to depart from that distinction is to cross a dangerous Rubicon. Some argue that the distinction is morally and practically indefensible. The Human Rights Act 1998 has added a new dimension to the debate. All are agreed that the ban on assisting suicide is an interference with the right to respect for private life protected by article 8. As the European Court of Human Rights has said, in *Pretty v United Kingdom* (2002) 35 EHRR 1, para 65, 'The very essence of the Convention is respect for human dignity and human freedom'. But several justifications have been put forward to support a hard and fast rule – the protection of weak and vulnerable people from insidious pressures, respect for the sanctity of all human life, and the preservation of trust and confidence in the medical profession. The European Court has held, in *Nicklinson v United Kingdom* (2015) 61 EHRR 97, that whether an interference such as this is justified is for each Member State to decide. There is no European consensus on the matter.

7. Under the United Kingdom's constitutional arrangements, only Parliament could change this law. But the Supreme Court could, if it thought right, make a declaration that the law was incompatible with the Convention rights, leaving it to Parliament to decide what, if anything, to do about it. The questions for the court would therefore be twofold: (1) Is the hard and fast rule banning all assistance to commit suicide a justified interference with the Convention rights of those who wish for such assistance? (2) If it is not, should this court make a declaration to that effect? In particular, is it appropriate to make such a declaration in this case? These are questions upon which the considered opinions of conscientious judges may legitimately differ. Indeed, they differ amongst the members of this panel.

8. Ultimately, the question for the panel is whether the prospects of Mr Conway's succeeding in his claim before this court are sufficient to justify our giving him permission to pursue it, with all that that would entail for him, for his family, for those on all sides of this multi-faceted debate, for the general public and for this court. Not without some reluctance, it has been concluded that in this case those prospects are not sufficient to justify giving permission to appeal.