Neutral Citation Number: [2008] IEHC 206

THE HIGH COURT

2004 No. 1093 J.R.

BETWEEN

DAVID GIBBONS

APPLICANT

AND
THE GOVERNOR OF WHEATFIELD PRISON

RESPONDENT

Judgment of Mr. Justice John Hedigan delivered on the 1st day of July, 2008.

1. In these proceedings the applicant seeks an order of *certiorari* quashing the order of the respondent (described as an "Administrative Order") dated the 24th November, 2004, made in disciplinary proceedings conducted by the respondent in respect of an allegation of misconduct against the applicant in Wheatfield Prison.

2. The applicant also seeks certain declarations concerning the unlawfulness, unconstitutionality or invalidity of the disciplinary proceedings conducted by the respondent, including, if necessary, a declaration of invalidity of the relevant legislative and regulatory provisions having regard to the provisions of the Constitution and/or a declaration of incompatibility of those provisions with the State's obligations under the European Convention on Human Rights.

3. The applicant also seeks damages for breaches of constitutional rights, breach of duty, including statutory duty, and/or pursuant to section 3 of the European Convention on Human Rights Act, 2003.

4. The grounds upon which that relief is sought are a want of fair procedures in the failure to give due notice, the failure to provide legal assistance or advice, the absence of an appeal procedure, the circumstances in which the disciplinary proceedings were conducted, amounting to degrading treatment or punishment, the absence of an independent and impartial hearing, the deprivation of the applicant's liberty otherwise than by a procedure prescribed by law and not in due course of law, and that the penalty was disproportionate.

5. The respondent opposes all reliefs sought and denies all the grounds upon which relief is sought. In particular, the respondent places emphasis on an alleged admission of guilt by the applicant during the disciplinary procedures.

6. The facts of this case are very basically that at approximately 7.15 on the 24th November, 2004, the applicant was taken from his cell following apparently confidential information or a tip off concerning the possible possession of prohibited items in his cell. He was brought to another cell and his clothes were taken off him so that they could be examined in the X-ray machine. He alleges that he was subsequently only given a pair of underpants to wear, the authorities state that he was given a full set of prison clothing. Three hours after that he was confronted by Deputy Governor Sugrue who read the report, which had been prepared by the investigating prison officer and which indicated that prohibited items had been found in his cell. According to the Deputy Governor, the applicant indicated that the report was not correct. According to the applicant, his response was "no comment". Proceedings were continued there and then by the Deputy Governor and the penalty of loss of days of remission together with loss of privileges was imposed there and then. Events have to a great extent overtaken this application. For example:-

> (a) The Prisons Act, 2007, and the new Prison Rules, 2007, now provide for an appeal to an independent Tribunal where loss of remission is imposed.
>
> (b) His days lost have been in fact restored to him.

7. The only remaining matter in dispute is the fairness of the proceeding that actually occurred and the fifty six day loss of privileges that resulted there from. The loss of privileges penalty has already been served and the applicant claims damages in respect of the loss of these privileges. All else seems to me to be clearly moot and not something the Court needs address now in the discretionary remedy of judicial review. At the heart of what is left at issue is the dispute over whether the applicant, when confronted, said "no comment", as he avers or whether he said the report was correct as Deputy Governor Sugrue avers, and whether he was almost naked or was properly clothed when the interview took place. It is to be noted that the applicant in his affidavit makes a number of claims which I find wholly improbable, that is:-

> (a) That he is unfamiliar with any of the appeal procedures that existed in the prison.
>
> (b) That he was not aware, nor were any of the other prisoners aware, of the return, through later good behaviour, of remission days lost as a result of disciplinary hearings.
>
> (c) That he never in fact admitted to anything in his previous record when confronted with the charge.

8. I have little doubt that with his record of nine disciplinary offences, the applicant was well aware of both of the above. It is noteworthy also that he brought his application for judicial review the day after the disciplinary hearing, the subject herein. I think that the applicant is a man well aware of the details of the disciplinary processes in prison. Deputy Governor Sugrue has exhibited the applicant's record that shows he did indeed, on occasions, other than herein, admit to disciplinary offences and I find the Court can rely upon those as being collaborative on the basis that they were prepared well before the events herein and in accordance with established prison practice. I further note that Deputy Governor Sugrue swore affirmatively the applicant said the report was correct when confronted by him, and stated that he was unaware whether the applicant was clothed under the blanket that he was covered in that he should have been wearing, having been issued with clothing when his own clothing had been taken from him earlier. For his part, the applicant says his response was "no comment" when confronted and that the Deputy Governor could not have failed to notice that he was almost naked under the blanket when he stood. Judging from his unreliability, in the matters that I have referred to above together with the written record of this and other disciplinary procedures, I think it far more credible he did admit the report was correct. Deputy Governor Sugrue swears in his affidavits that he deals with several such disciplinary reports every week and that he has never dealt with one where the inmate was either wearing just underpants or was partially clothed. I find it hard to believe an Officer of Deputy Governor Sugrue's seniority would involve himself in such a grievous breach of his duty which ought to carry the most severe penalty were it to occur. He has robustly denied the allegation and he has not been cross-examined on his affidavit as was open to the applicant. In these circumstances, I find his account of these events far more convincing and I find the applicant did, in fact, admit the charge and was not largely unclothed when he did so. I also find nothing untoward in the Deputy Governor confronting him there and then with the report. Other report forms, the P19s, show that where the applicant, on other occasions,

denied initially the charge alleged, an investigation followed and he subsequently admitted to the charges. These are prison conditions with which we are dealing here and getting through breaches of discipline as quickly as possible may well be in everyone's interest provided always that fair procedures are followed and the prisoner has the right to deny and require a proper investigation. This clearly had happened before with the applicant and there is no reason to believe that had he wished to he could have denied the report as he had done before and an investigation would have followed. For all these reasons I refuse the reliefs sought.