

## THE HIGH COURT

2001 No. 17694 P

BETWEEN

GARY BREEN

PLAINTIFF

AND

THE GOVERNOR OF WHEATFIELD PRISON, THE MINISTER FOR JUSTICE, EQUALITY AND LAW REFORM, IRELAND AND THE ATTORNEY GENERAL

DEFENDANTS

**Judgment of Mr. Justice Gilligan delivered on the 11th day of April, 2008**

1. The background circumstances to this case are that the plaintiff who was born on the 19th day of May, 1977, and is unemployed, was lawfully incarcerated at Wheatfield Place of Detention, when on the 16th day of January, 1999, at approximately 6.30p.m. in the recreation area of landing 4G a fellow inmate poured a bucket of boiling water over him causing him very significant personal injuries involving burns to almost his entire back, neck, left hand, upper anterior chest and neck which injuries required extensive hospitalisation and treatment and resulted in the plaintiff suffering very severe and extensive scarring to his back and upper body and psychological injury. The case brought by the plaintiff against the defendants' is clearly set out in the pleadings to the effect that Mr. Daly, the fellow inmate who poured the bucket of boiling water over the plaintiff, was in effect allowed to do so by the prison authorities or that alternatively the prison authorities were negligent and in breach of duty in allowing Mr. Daly attack the plaintiff. In particular it is alleged that knowing that the plaintiff was about to be assaulted the prison authorities did not take any or any adequate steps to prevent the assault.

2. The background scenario appears to be that on a previous occasion on a Dart train travelling in the South of the City of Dublin, the plaintiff using a Stanley knife cut the throat of Mr. Daly's cousin who was a student at the time. Charges had been brought against the plaintiff but had at an earlier Court sitting been struck out and that was the situation that prevailed on the 16th of January, 1999, when this assault took place. Subsequently the charges were re-entered in relation to the incident on the Dart train and the plaintiff pleaded guilty and was sentenced to a term of eight years imprisonment.

3. It is of some significance that prior to the incident in January, 1999, the plaintiff had spent a very significant period of time of the previous eleven years in and out of prison for various offences. I am satisfied that at the time of this incident he was well acquainted with prison life and the rules and regulations pertaining to same.

4. The plaintiff appears to have come into contact with Mr. Daly in Wheatfield a few months prior to January, 1999, and the plaintiff alleges that Mr. Daly indicated to him that his uncles would take care of the plaintiff when he was released from prison at the expiry of the sentence which he was then serving. The plaintiff also refers to altercations with Mr. Daly and has given evidence that he was in fear for his own safety by reason of a perceived attack by Mr. Daly upon him. The plaintiff has given evidence that he was advised by a fellow prisoner whose name he did not know, but who was from Kerry that Mr. Daly was going to get him with a home made weapon. The plaintiff has given evidence that he made complaints to Governor Riordan, Governor Treacy, Officer Carroll in the workshop, Officer Baker and Officer Dowd that he was in fear for his safety by reason of a perceived attack upon him by Mr. Daly.

5. The plaintiff alleges that there was particularly bad feeling between himself and Officer Dowd, that they were continually using abusive and foul language to one another and that the plaintiff had made a complaint to the Governor as regards post not being delivered to prisoners by Officer Dowd and that as a result of having been threatened by Officer Dowd the plaintiff withdrew his complaint. Further the plaintiff alleges there was an incident in his cell involving Officer Dowd when he removed a number of pictures of the plaintiff's children from the wall of the cell and this led to an altercation whereby the plaintiff says he grabbed Officer Dowd and threatened to cut his throat. In general the plaintiff says that relations between himself and Officer Dowd were particularly bad.

6. The plaintiff makes a specific allegation that a few months prior to the incident occurring he attended with Governor Riordan and told him he was in fear for his personal safety from Mr. Daly. He says that there was a disagreement between the two of them and Governor Riordan punished the plaintiff with two days lock up.

7. In general terms the plaintiff has given evidence that he made complaints as regards his personal safety and a likely attack by Mr. Daly upon him to Governor Riordan, Governor Treacy, Officer Carroll who was in charge of the work shop, Officer Dowd and Officer Baker and that generally all these officers were aware that he was in fear of his personal safety.

8. On the morning of the incident itself, the plaintiff at his own request met with the Visiting Committee. His complaints were that his landing was being run unfairly and that he was not getting the prescribed number of phone calls. He also complained that staff had assaulted prisoners on his unit, and he said he was anxious to be transferred to another landing. The plaintiff made no complaint, either specifically or even in very general terms of being in any way in fear for his personal safety by reason of a perceived attack. His explanation in this regard, in the context of a meeting with the Visiting Committee, is that he would have been perceived as a rat within the prison system had he made such a complaint.

9. The plaintiff's request for a transfer was in fact dealt with within a few hours of his meeting with the Visiting Committee, but on the plaintiff's evidence he did not get the transfer to his requested landing. He was anxious to go to 1F and the reason he says he gave in this regard was because prisoners who worked in the kitchens were mostly housed on landing 1F. In fact the transfer the plaintiff got was to 4G and was an area where he was likely to come into contact with Mr. Daly.

10. The plaintiff says that he complained in this regard to both Officer Dowd, who was the person to bring him across from his previous landing to area 4G and Officer Baker who was in charge of landing 4G at the time of the plaintiff's arrival, sometime around 2.00p.m. on the afternoon of the incident and Officer Baker was in the plaintiff's company through until his tour of duty ended at approximately 5.00p.m.. The plaintiff has given evidence that Officer Dowd told him on his transfer across to landing 4G "to watch his back because he was in for a big surprise".

11. Furthermore, the plaintiff has given evidence that on arrival on landing 4G and being allocated a vacant cell he had a conversation with Officer Baker in which he detailed to him his fear of being on landing 4G because he would come into contact with Mr. Daly. The plaintiff says that he stayed in his cell on his new landing for the afternoon and was in fear because he realised that he was going to come in direct contact with Mr. Daly, who had access to the same recreational area, but that at around 6.00p.m. he decided to go to the recreational area and take his chances.

12. The general layout of the recreational area 4G is that when one enters there is a control room immediately on the left and further down the recreational area to the left there is a pool room. Immediately to the right of the entrance is a chair, a table and a boiler with boiling water whose primary use would be for hot drinks and further to the right a number of sinks. There is then a long rectangular room down to a sluice room and lock up closet, described as the cleaner's room and on the wall of this area facing back down the room is a television. There are sixteen prisoners to a landing and at the time of the incident there would have been approximately eight prisoners in the general vicinity including the plaintiff and Mr. Daly. There was an officer in the control room and Officers Duffy and Farrelly were at the end of the recreation area where one enters, in the general vicinity of the control room.

13. Towards 6.00p.m. the plaintiff went into the recreational area and sat down beside a fellow inmate whom he knew and began to watch television. He saw Mr. Daly when he first walked into the recreational area as he was in the pool room. Subsequently, Mr. Daly came in and sat down in front of him but the plaintiff took no heed of him. He was approximately twelve feet away from him. He did not anticipate any difficulty and was happy watching T.V. He was aware that there were two prison officers in the immediate vicinity outside the control room behind him and there was one officer in the control room itself. He had no reason to suspect that Mr. Daly would attack him in any way and the fellow inmate, who was from his own area, was beside him and there was also an inmate present, who was a distant relative and he thought he was safe. He accepts that he did not expect Mr. Daly to scald him and that while Mr. Daly was in his general vicinity he had felt comfortable. He thought nothing of Mr. Daly going to get the bucket and he did not think that Mr. Daly would attack him in the recreational area. He thought that if he was going to be attacked it would happen in his cell. He accepts that the prison officers in attendance could not have known that he was going to be attacked by Mr. Daly on the occasion in question in the recreational area.

14. Having been attacked by having the bucket of boiling water thrown over him from behind, the plaintiff says that the two prison officers who were outside the control room ran leaving him at the mercy of Mr. Daly who proceeded to kick and punch him as he lay on the floor and that subsequently a number of prison officers came back into the room after approximately two minutes and rescued him.

15. Subsequent to the incident the plaintiff was visited by a Garda O'Hara, who was the investigating Garda and he gave a statement on the 23rd January, 1999, which he signed and in which he described the incident and stated "I don't know why this happened".

16. The plaintiff was very evasive as regards this statement indicating that he believes that he may have made a statement in Wheatfield subsequent to his return there from the hospital.

17. There was no indication by the plaintiff to Garda O'Hara that the prison authorities were aware that he was going to be assaulted or allowed the assault to take place or failed to take any, or any adequate precaution for the plaintiff's safety and welfare on the occasion in question.

18. The plaintiff having been detained in hospital for approximately four weeks then returned to Wheatfield and accepts that he made no formal complaint to any person in authority within the prison service as regards the background circumstances to the assault, other than a generalised statement that it was the fault of the authorities because he had been allowed to come into contact with Mr. Daly.

19. I am satisfied from the evidence adduced that the plaintiff and Mr. Daly had come into contact several times prior to the actual incident occurring on the 19th day of January, 1999, and that if Mr. Daly had wished to attack the plaintiff he would have had opportunity to do so, bearing in mind that when he eventually did so, he was in the presence of and within a very short distance of three prison officers.

20. The plaintiff never made any subsequent complaint as regards the alleged general background circumstances to his assault to the Visiting Committee, notwithstanding that, despite his subsequent transfer he was an inmate in Wheatfield for the best part of a further year.

21. The plaintiff says that Officer Dowd said to him following his return to Wheatfield words to the effect that he knew that the plaintiff was going to get done and that "I got you done once, I'll get you done again".

22. In correspondence involving several letters following the plaintiff's return to Wheatfield, he sought a transfer out of Wheatfield to Arbour Hill and subsequently to Mountjoy, and having been transferred to Mountjoy he more or less immediately sought a transfer back to Wheatfield. In one of these letters as dated the 14th day of June, 1999, to the Governor while in Mountjoy Prison, the plaintiff accepts that he wrote a number of falsehoods and in several other letters he accepts that he was prepared to complain that he no longer felt safe within Wheatfield. He further was prepared to state in writing that he had been threatened and that he would be done again.

23. The plaintiff conceded in evidence that insofar as the pleadings set out an allegation that the prison authorities deliberately and consciously allowed Mr. Daly to attack the plaintiff, he accepts that Officer Dowd did not know that Mr. Daly had in mind to throw a bucket of boiling water over him on the particular occasion. The case the plaintiff makes out is that Officer Dowd knew in general terms that the plaintiff was likely to be attacked by Mr. Daly.

24. Paul Saunders gave evidence that he was incarcerated in Wheatfield in 1999, and he says he was present following the plaintiff's return from hospital when Mr. Dowd indicated to Mr. Breen words to the effect "you were done once, I can have you done again".

25. Officer Duffy gave evidence that he is a senior control and restraint instructor and that he was in charge of recreation area 4G at the time of the incident. He says that around 6.00p.m., Mr. Daly requested permission to clean his cell which was granted, and that it was not unusual for a prisoner to clean his cell at around this time, although he accepted that it would have been more normal to have cleaned the cell at around 9.15a.m.. To enable Mr. Daly get a bucket and mop he unlocked the sluice room. He says that it was not unusual for prisoners to get water from the boiler immediately adjacent to the entrance to the recreation area and that the reason for this is that prisoners prefer hot water because the floor dries quicker, and his evidence is that there was nothing unusual about this practice.

26. It is clear that at the time when Mr. Daly was filling the bucket with boiling water he was in the immediate vicinity of three prison officers and he then appears to have walked down the room and poured the bucket of boiling water directly over the plaintiff at a time when he was seated and watching television.

27. He denies that in any way he left the scene and says that himself and Officer Farrelly immediately went to the assistance of the plaintiff, separated him from Mr. Daly and insofar as the plaintiff made reference to running into the sluice room, Officer Duffy says

that this would not have been possible because he had previously locked the sluice room following Mr. Daly taking the bucket and mop therefrom. Officer Duffy says that he had no knowledge of any row between Mr. Daly and the plaintiff. He accepted that the boiling water would be very dangerous and that there was no procedure in place at the time, in respect of the boiling water.

28. He says that if the plaintiff had come to him and advised him of any potential difficulty between himself and Mr. Daly, he would have sorted out the problem. There was no need for the plaintiff to come out of his cell to the recreation area if he was frightened of Mr. Daly.

29. Officer Farrelly denied that as indicated by the plaintiff he had "legged it" from area 4G the moment the incident occurred. He says that there was nothing unusual about the boiler being used for hot water to clean the cells. There was never any bleach left out for use by the prisoners. He was not put on any notice of a potential difficulty between prisoner Daly and the plaintiff and he was not told of anything unusual. The procedure now apparently is that the boilers have been removed and prisoners have their own kettles.

30. Officer Dowd in giving evidence absolutely denied that he had ever made the comments alleged by the plaintiff. If he had had it in for the plaintiff he described how on a number of occasions he could have put the plaintiff on report pursuant to a P19 form, and then the prisoner would be brought to the Governor, given an opportunity to defend himself and the Governor would decide the appropriate action to be taken, which could involve loss of privileges, visits, and phone calls. He accepted that he would have the opportunity, if he so chose, to make life difficult for a prisoner. He accepted that he had had a number of small run-ins with the plaintiff but nothing serious. Insofar as the plaintiff himself had given evidence of an incident where he had allegedly removed photographs of the plaintiff's children from the wall of his cell and that an altercation had followed in which the plaintiff had threatened to cut his throat, he says that this never occurred and had it occurred he would have had no alternative but to put the plaintiff on report, pursuant to a P19 Form and he would also have gone to the Garda Síochána, in that such a situation if it had occurred would have been regarded as extremely serious.

31. He states that no prisoner would be forced to go to a landing if there was particular difficulty and he would not be moved. He indicated to the court that a prisoner would not be put in the way of danger. In order for a prisoner to be transferred there has to be a vacancy. Where the prisoner is moved to was not his decision and he could not interfere in any way with the instruction that would come down from the Chief Officer. His rank would not allow him to pick and choose where a prisoner would be sent.

32. He says that he had only been made aware of the case some three/four months previously and he was never asked about the incident subsequent to it having taken place.

33. Deputy Governor Kavanagh gave evidence of having been in the Prison Service for some 21 years. If a prisoner gave a valid reason for not wishing to be transferred the matter would be investigated. A prisoner can complain to any officer and in such circumstances a prisoner will be seen on the day of a request. He personally had examined the Governor's books and there is no recording of the plaintiff having attended with Governor Riordan some few months prior to the incident, or of him having been subjected to lock up and in fact the only reference in the lock up book to the plaintiff having been subjected to lock up was on 11th October, 1999, when he was subjected to a 23 hour lock up and the reason is set out. There is no lock up unit as such in Wheatfield and a prisoner in such circumstances would be locked up in his own cell. Deputy Governor Kavanagh accepted that Assistant Governor Treacy was responsible for the work and training area and he would interview the prisoners and allocate work to them. He accepted that there is a safety statement and prison rules. In respect of visits to the Governor there is a book that records each visit and if a prisoner does not turn up, the words "declined" are written in. In respect of reports for disciplinary matters these are made out on P19 Report Forms and would be placed on the prisoners file. He says that there was at the material time no system whereby the transfer of prisoners to different landings was recorded in writing.

34. Officer Baker gave evidence that he was the officer in charge of landing 4G. He was only contacted approximately a week prior to the hearing commencing as regards the case, but he remembered the plaintiff and he says that the plaintiff never gave him any indication that there was a problem with Mr. Daly. He says that at no time did the plaintiff make any statement to him that he was in fear. At 5.00p.m. on the day of the incident he handed over the care of the plaintiff to Officer Duffy and if any indication had been given to him by the plaintiff, he would have reported that to Officer Duffy when he was taking over. Between 5.30p.m. and 7.30p.m. on the day of the accident the plaintiff could not have remained in his open cell. He either went to the yard or to the recreation area, or he could have remained in his cell but the cell would have been locked.

35. From two diary entries that he maintained he was in a position to state that he was attending with the plaintiff in hospital on 28th and 31st of January, 1999, and that he was there on a twelve hour shift, from 8.00a.m. to 8.00p.m.. He in fact was handcuffed to the plaintiff and at no stage did the plaintiff make any reference to having been set up, or refer in any way to the complaints he allegedly made to Officer Baker. He was aware that the incident had occurred soon after it happened. He says that it was not unusual for prisoners to use the boiler for hot water to clean their cells.

36. Mr. Peart on the plaintiff's behalf takes issue with the defendants' discovery and in particular with the absence of a safety statement and the prison rules. It was elicited that there is a Wheatfield Prison information booklet and this was made available to the plaintiff's legal advisors. Mr. Peart submits that these documents were deliberately withheld, but I am satisfied from the precise wording of the order for discovery that the situation is unclear. The evidence adduced before me was to the effect that there was not a safety statement in existence on 16th January, 1999, and I understand Deputy Governor Kavanagh's evidence to be that there is now a safety statement and that insofar as there are prison rules, these are statutory rules which came into being in 1947 and these rules are available in the public domain. Insofar as the information booklet was made available, Mr. Peart does not contend that there is anything of major significance in any of the documents which in some way has prejudiced his client's position.

37. It is further submitted that the defendants' have not called in evidence Governor Riordan, Governor Treacy or Officer Carroll, but it does appear that none of these witnesses were advanced in the schedule of witness, expert witnesses and reports as provided for pursuant to O.39, r.46(1)(ii) of the Rules of the Superior Courts and in fact, Governor Riordan was specifically identified as a witness on the plaintiff's behalf. Mr. Peart submits that he has been deprived of the opportunity to cross examine Governor Riordan, particularly in respect of the fact that there is no record of the plaintiff's alleged visit to complain to Governor Riordan as regards Mr. Daly.

38. Mr. Peart submits that it is a significant pointer in the case that the authorities did not interview Officer Dowd and Officer Baker following the incident.

39. Mr. Peart criticises the system whereby the transfer of prisoners from one landing to another takes place without the prisoners name in writing being recorded and invites the court to consider that this proposition cannot be correct.

40. Mr. Clarke on the defendants' behalf submits that for the plaintiff to be believed there has to be a succession of prison officers who have told deliberate lies and a monumental conspiracy to set up the plaintiff. For such a conspiracy to have occurred on the very day of the incident, the plaintiff having made a request for transfer to the Visiting Committee, a senior officer would have to have decided on the transfer itself and as to where the plaintiff was to be transferred, Officer Dowd would have to have been on duty, there would have to have been a vacancy on landing 4G and either or both Officers Duffy and Farrelly would have to have been involved in the conspiracy to have allowed Mr. Daly access to the boiling water. In essence Mr. Clarke submits that the allegation of a set up is without foundation.

41. Mr. Clarke lays emphasis on the statement as made to the investigating Garda on 23rd day of January, 1999, when the plaintiff stated that "he did not know why this happened".

42. It is submitted that it was only four years after the statement of claim was delivered that Officer Dowd's name was mentioned for the first time. No details of any other complaints, such as to Officer Baker were provided and the defendants' only learnt of these complaints during the course of the evidence. Insofar as it was alleged that there was a direct complaint to Governor Riordan a few months prior to the incident occurring, this was only detailed in evidence at the hearing of the action.

43. Mr. Clarke relies on the evidence of the plaintiff himself that he never anticipated the attack while in the recreational area on landing 4G, that he expected that there would be a stand up fight with Mr. Daly, or that alternatively an incident would occur in his cell and further the plaintiff's admission that the prison officers could not have anticipated the attack by Mr. Daly upon the plaintiff as he was watching television in recreation area 4G at the time of the incident.

### **The Law**

44. The law as stated by Hamilton P., in *Muldoon v. Ireland and the Attorney General* [1988] I.L.R.M. 367, is quite clear and is that:-

"The prison authorities are required to take all reasonable steps and reasonable care not to expose any of the prisoners to a risk of damage or injury, but the law does not expect the authorities to guarantee that prisoners do not suffer injury during the course of their imprisonment."

### **Conclusion**

45. There is a straight conflict on the evidence in this case and I bear in mind that I have not heard evidence from Governor Riordan, Governor Treacy or Prison Officer Carroll who was in charge of the work shop

46. There is in my view a contradiction in the plaintiff's own evidence because on the one hand he appears to have an obsession about ratting on other prisoners and getting himself into difficulties with the prison population and on the other hand, his case is that he made numerous complaints about Mr. Daly to several officers. There is no record of any complaint and in particular no record of the plaintiff having gone to see Governor Riordan a few months prior to the incident complained of. There is no record of the plaintiff having been put on lock up a few months prior to the incident occurring and there is no record of the plaintiff having been put on any P19 report prior to the incident complained of. If as indicated by the plaintiff in evidence, he grabbed Officer Dowd and threatened to cut his throat, I take the view that it is a reasonable inference as indicated by Officer Dowd in evidence, that this matter would have been treated very seriously, the prisoner put on report and that Officer Dowd would have reported the matter to the Garda authorities. Further there is no record of any complaint being made by the plaintiff in respect of postal deliveries or the withdrawal of any such alleged complaint.

47. There is in my view a further contradiction in the plaintiff's evidence and that is if as he suggests he was being set up and he was told there was a surprise in store for him on landing area 4G, this would be all the more reason for him to have opted in his first few hours on arrival on the landing to have remained in his cell and taken the matter up with a higher officer the following day, instead of which the plaintiff left his cell at around 6.00p.m. and went to the recreation area, where he knew he was going to come in contact with Mr. Daly and having come in contact with him, considers himself to have been in no danger. I take the view that it is a reasonable interpretation of events that if the plaintiff had made such vociferous complaints regarding his safety and perceived threat of attack from Mr. Daly, on the balance of probabilities he would have been more likely to have remained in his cell until the situation was sorted out.

48. There is also the aspect of the Visiting Committee meeting, which was arranged for the morning of the incident and nowhere in the interview notes which were admitted is there any mention made of a perceived threat to the plaintiff's safety. He complained of not being allowed to make phone calls and of alleged assaults by prison officers on prisoners in the unit where he was housed and of wanting a transfer to a different landing. The plaintiff's explanation for not making any complaint because he did not want to rat on Mr. Daly is, in my view, untenable against the case made by the plaintiff that he was complaining to various prison officers about Mr. Daly. I take the view that a reasonable inference can be drawn from the Visiting Committee's admitted notes that the plaintiff wanted to change landing because of difficulties with telephone calls and of alleged assaults on fellow prisoners by prison officers.

49. As regards the incident itself, the plaintiff never considered himself under any threat from Mr. Daly in the recreation area and accepts that the three prison officers on duty could not have anticipated the events that occurred. The evidence of the prison officers is that it was not unusual for prisoners to take boiling water from the boiler, and that this is what occurred on the occasion in question. The plaintiff himself accepted in evidence that he saw Mr. Daly going down to the sluice room and getting a bucket and walking up the other end of the room and yet, did not consider himself to have been in any danger. I take the view on the evidence that it was not unusual for prisoners to fill buckets with boiling water from the boiler. If it was unusual, or did not happen previously, then on the conspiracy theory Officer Duffy was complicit in permitting Mr. Daly to fill a bucket with boiling water from the boiler effectively for the purpose of emptying it over the plaintiff. I do not accept that that situation pertained on the evidence.

50. It is specifically alleged in the statement of claim as delivered on the 6th December, 2001, that the boiling water which was poured over the plaintiff was mixed with sugar and bleach. I appreciate that Mr. Peart on behalf of the plaintiff did not press the issue of the bleach, but nevertheless no evidence was adduced to support such a serious allegation and the evidence of Officer Farrelly which I accept is to the effect that no bleach was ever left out for use by prisoners. No medical evidence was adduced to support the contention that the boiling water was mixed with sugar and/or bleach. Against the background of the plaintiff's case that he was set up by the prison authorities, this is a particularly sinister allegation and one which on the evidence adduced I reject.

51. Following the incident while in hospital the plaintiff was visited by the Garda Síochána investigating the assault upon the plaintiff. The plaintiff gave a detailed statement containing several factual references, and he indicated that he did not know why the incident occurred. I found the plaintiff by his demeanour in the witness box to be very evasive concerning the statement he made to the investigating Garda and he was clearly intent in attempting to make the case that this statement was probably given at a time later

in remove after he had been transferred back to Wheatfield following his period of hospitalisation. It is patently clear that the statement was taken while the plaintiff was in hospital and the detailed cross examination of the plaintiff demonstrates that the entire of the statement is factually correct. It may well be that the plaintiff was on medication and was suffering pain, but on the evidence he did not advance any reason at the time for not making a statement and the treating doctors did not believe that there was any medical reason why he should not give the statement. The statement given within a few days of the incident makes no reference to any set up or complicity by the prison authorities in the assault and against the background of the plaintiff's evidence that he had told several officers of the fear for his safety from Mr. Daly, contains no reference at all to that aspect and in fact expressly rules out such a factual background by the indication that he did not know why the incident occurred.

52. Apart from a general complaint that the prison authorities should not have let Mr. Daly have access to the plaintiff within the prison no allegation was made to the prison authorities following the plaintiff's return from hospital that he had been set up, or that the prison authorities or certain officers were in some way complicit in the assault, or that having complained on several occasions to the prison authorities his complaints had been ignored as regards a perceived threat from Mr. Daly. It has to be borne in mind that against the background of the plaintiff's evidence, that he on several occasions had no difficulty in advising the prison authorities prior to the incident as regards the perceived threat and it is accordingly, difficult to reconcile the plaintiff's evidence with the factual events which occurred subsequent to the assault, both while the plaintiff was in hospital and on his subsequent return to Wheatfield.

53. The plaintiff clearly had every opportunity to voice any complaints he had with regard to the assault with the Visiting Committee and he accepts that he did not do so.

54. I have every sympathy with the plaintiff because quite clearly both, on the medical evidence and on viewing the nature and extent of the scarring as sustained by him, he has suffered a very significant injury. As a matter of law however, the onus rests upon the plaintiff to satisfy the court that on the balance of probabilities his version of events is correct. In the particular circumstances of this case the court would have to be satisfied that on the balance of probabilities the events as described by the plaintiff are generally correct. Taking the plaintiff's case at its higher level I do not accept that the plaintiff was in any way set up by Officer Dowd. For such a set up to have occurred there would have to have been an extraordinary series of coincidences and extensive negotiations with other prison officers, between midday and approximately 6.30p.m. on the day of the incident and furthermore, Officer Duffy and by implication Officers Farrelly and Dowling, who were the prison officers on duty in recreation area 4F at the time, would have to have been complicit to allow on the plaintiff's evidence for the most unusual feature of a prisoner being permitted to fill a bucket with boiling water from the boiler and it would accordingly follow, that at least Officer Duffy knew precisely what was going to occur and yet on the plaintiff's own admission he accepts that the prison officers who were on duty could not have anticipated what was going to happen. In my view, the plaintiff's case so forcibly set out in the pleading to the effect that he was set up has no substance and fails.

55. The further claim advanced by the plaintiff is that he was specifically transferred regardless of his several complaints to various Governors and prison officers to landing 4G and that the prison authorities knew that in making such a transfer he would come in contact with Mr. Daly and an assault was likely. This issue is to be decided on the basis as to whether or not I accept the evidence of the plaintiff that he made the several complaints. I take into account the evidence of Officers Dowd and Baker that they totally deny that they were ever put on notice by the plaintiff that there was a problem with Mr. Daly, and a risk of a perceived assault and further that if any such complaint had been made the plaintiff would not have been transferred to landing 4G. I bear in mind that Governors' Riordan and Treacy did not give evidence to rebut the plaintiff's allegations and further that Officer Carroll from the work shop, to whom a further complaint is alleged to have been made, did not give evidence. There is however, in particular no record of the plaintiff's attendance with Governor Riordan some few months prior to the incident and no record of the Governor's apparent order that the plaintiff be subjected to lock up which would be in the form of a punishment. The plaintiff had the ideal opportunity to complain to the Visiting Committee on the very day of the incident as regards his alleged concerns about Mr. Daly, but he did not do so and while he did ask for a transfer to a different landing, his complaints on that occasion were as regards an inability to access the telephone to make calls and alleged assaults upon other prisoners on the landing by prison officers. Perhaps the most telling evidence against the plaintiff is that he himself having arrived on landing 4G opted, knowing the prison rules, not to remain locked in his cell during the recreation period or even alternatively having entered the recreation area and seen Mr. Daly not to have opted either to have returned to his cell or to have gone to the yard, in the manner as described by Officer Baker. I take the view that a reasonable inference can be drawn from these facts that the plaintiff did not consider himself to have been in any danger from Mr. Daly. Furthermore, the plaintiff made no move when Mr. Daly sat down in front of him some twelve feet away, nor was there any reaction from the plaintiff when Mr. Daly got up, approached Officer Duffy walked back down the room to get a bucket and mop and then walked back up the room again towards the boiler. These factual circumstances in my view do not accord with a situation where the plaintiff was in fear of an attack from Mr. Daly, nor do the facts accord with the plaintiff in the previous few hours having detailed complaints to both Officer Dowd and Officer Baker of his concerns about a perceived attack from Mr. Daly. The plaintiff's statement to the investigating Garda made within a few days of the accident, in my view, on the balance of probabilities truthfully explains the plaintiff's view as regards the attack upon him by Mr. Daly in the terms "I don't know why this happened".

56. On no occasion while Mr. Baker was with the plaintiff for two twelve hour periods of time on the 28th and 31st January, 1999, in the hospital did the plaintiff ever intimate to Mr. Baker anything about having made a complaint to him and of having been scalded by Mr. Daly some few hours later. On his return to Wheatfield the plaintiff made no formal complaint to any person in authority and more particularly, did not avail of any opportunity to raise a complaint with the Visiting Committee.

57. Insofar as there is direct conflict between the evidence of Officer Dowd and Officer Baker and that of the plaintiff and Mr. Saunders, I prefer the evidence of the prisoner officers and I reject the evidence of the plaintiff and Mr. Saunders. I take the view, if I am satisfied that the alleged conversations of complaint between the plaintiff and Officers Dowd and Baker did not occur, that it is reasonable to infer on the balance of probabilities, particularly in the absence of any record that the like alleged conversations with Governor Riordan, Governor Treacy and Officer Carroll from the work shop also did not occur and I so find. I further take the view that I am entitled in coming to this conclusion to bear in mind that no personal oral complaint from the date of the incident and throughout the pleadings was ever intimated against Governors Riordan and Treacy and Officer Carroll, and these complaints were only brought to the notice of the defendants' in evidence some nine years after the incident occurred. I conclude accordingly, that prior to the incident occurring when the plaintiff was scalded by Mr. Daly he had not brought to the prison authorities attention any concern he may have had about being subjected to a perceived attack by Mr. Daly because he had previously been involved in an incident on the Dart train when he had cut Mr. Daly's cousin's throat with a Stanley knife.

58. In these circumstances the prison authorities cannot, in my view, be said to have been negligent or in breach of duty in failing to prevent the attack on the plaintiff and accordingly I dismiss the claim.