Neutral Citation Number [2012] IEHC 229

The High Court

Habeas Corpus

2012 642 SS

Between

Stephen Walsh, Roger Ryan and Dermot Byrne

applicants

and

The Governor of Midlands Prison

respondent

and

The Attorney General, the Director of the Court Services, the Minister for Justice Equality and Law Reform and the Director of the Prison Service

notice parties

Judgment of Mr Justice Charleton delivered on the 14th day of June 2012

This is a personal application to the court by the first applicant on behalf of all three applicants, each of them being convicted prisoners in the Midlands Prison.

Declarations are sought that the respondent and the notice parties have prevented indigent prisoners from gaining equal access to justice and in that regard have acted in an unbelievably deplorable and constitutionally unacceptable manner.

On Bill number CC 0091/98 the first applicant complains in a most vague manner of the conduct of Carney J. He has nothing to complain about. No reason for whatever he is on about is set out in the documents. Any issue as to transcripts on a pending appeal is a matter which cannot possibly undermine the legality of the detention of a prisoner following a trial in due course of law resulting in a conviction. The reason I can make no order on an application such as this is that there is nothing in evidence before me which would suggest that the applicant is in unlawful custody. The decision in relation to the grant of an order of habeas corpus in *The State (McDonagh) v Frawley* [1978] IR 131 is binding on this Court. At p 136 O'Higgins CJ stated:

> The stipulation in Article 40.1 … that a citizen may not be deprived of his liberty save "in accordance with law" does not mean that the convicted person must be released on *habeas corpus* merely because some defect or illegality attaches to his detention. The phrase means that there must be such a default of fundamental requirements that the detention may be said to be wanting in due process of law.

It would only be if transcripts are being kept from a prisoner or his legal advisers with a view to frustrating an appeal that any such ground might arise. Since transcripts are furnished as a matter of course to prisoners upon conviction when they have decided to appeal, the complaints raised lack any credibility.

It is a matter for the prison authorities to decide which prison is most suitable for the custody of, and the rehabilitation needs of, any prisoner. As to how a prison is to be conducted, that is a matter for the governor of each institution, subject to the prison rules. In *Foy v Governor of Cloverhill Prison* [2010] IEHC 529 paragraphs 18-19, this Court put the law in this way:

> The fact of imprisonment, of necessity, curtails the exercise of the rights guaranteed to the family under Article 41 of the Constitution. One of the entitlements of a married couple is to beget children. Imprisonment, however, undermines that right, since conjugal visits are not provided for in the Prison Rules, and since the passage of time will lead to ageing and increased infertility. Nonetheless, this restriction, or even destruction, of a fundamental family right can be lawful within the context of a harmonious interpretation of the Constitution; *Murray v. Ireland*, [1985] I.R. 532. Among the fundamental rights retained by prisoners are those to legal and medical assistance and to access the courts. There is no entitlement to expose the health of a prisoner to risk unless there is a situation of compelling justification or necessity; *The State (Fagan) v. The Governor of Mountjoy Prison,* (Unreported, High Court, McMahon J., 6th March, 1978) at 17. Such measures incidental to imprisonment as are necessary for the proper implementation of an order made by a court, whether for remand of an accused or sentence of a convict, are within the entitlement of the governor in the management of a prison.
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> Imprisonment cannot amount to an unlawful infringement of the rights of the family if the order to imprison is validly made and the conditions of detention humanely recognise such rights as the prisoner retains within the context of the reasonable management and governance of a lawful place of detention. The courts, the trial of crime, the classification of offences into serious and less serious, the implementation of penalties, and the commutation of sentences, are all provided for in the Constitution. Imprisonment is, of necessity, the imposition of unwanted discipline, by way of punishment, or in the case of remand, an administrative measure on those in respect of whom facts have been found by a court of appropriate jurisdiction in accordance with the scheme provided for under the Constitution. In the case of convicted prisoners, they have been found guilty beyond reasonable doubt of offences warranting imprisonment. In the case of remand prisoners, the restrictions on their liberty are heavily circumscribed by both the relevant rules of court and the entitlement which they have to bail absent the prosecution proving as a probability a risk of absconding, interfering with witnesses, or the commission of serious crime. In *Murray v. Ireland*, Costello J. put the scheme under the Constitution in the following way, at pp. 542 to 543:-

> "When the State lawfully exercises its power to deprive a citizen of his constitutional right to liberty, many consequences result, including the depravation of liberty to exercise many other constitutionally protected rights, which prisoners must accept. Those rights which may be exercised by a prisoner are those (a) which do not depend on the continuance of his personal liberty (so a prisoner cannot exercise his constitutional right to earn a livelihood) or (b) which are compatible with the reasonably requirements of the place in which he is imprisoned, or to put it another way, do not impose unreasonable demands on it… This means that the fact of imprisonment does not in itself amount to an unconstitutional infringement of a prisoner's rights."

The applicant further complains that his right of access to the court is being impeded in two ways by the prison authorities. Firstly, against a background of numerous applications by this prisoner to the courts, and the consequent build-up of documentation as application is made upon application, very large envelopes are required by him. As the prison authorities will not supply anything beyond envelopes of an ordinary size, he feels the need to apologist to the court that he has to stuff his documents into what he says are unsuitably sized envelopes. The stationery furnished by the prison, he claims, is a breach of his constitutional and human rights. That is a misapprehension. These important rights have to do with the protection of citizens of Ireland in the fundamental entitlements that inure to their benefit, and which they have given themselves by passing the Constitution or which occur by implication of natural law, whereby liberty, life, property and dignity are assured. This has nothing to do with the size of envelopes.

Secondly, the applicant complains that, when he needs to have an affidavit sworn so that he can make a further application to the courts, he is obliged to pay between €30 and €50 to a practising solicitor, which he characterises as "rip off prices". In reality, however, he has made this application on a unsworn basis and the remedy of *habeas corpus* under the Constitution is capable of bypassing any formality by way of court rules or procedure where that is appropriate.

The applicant also takes issue with the informal system whereby any prisoner in the State may write to the Central Office of the High Court and make a complaint. Sometimes these complaints are serious. Each such complaint is investigated and where necessary a report is sought from the governor of the relevant prison. A ruling is then made on the complaint in open court. This is a highly effective means of ensuring that prisoners are not isolated and that they have an ultimate authority to which to turn on matters of law. The informality of the system is of core benefit to its administration. Nothing about that informal procedure disables any form of judicial review under Order 84 of the Rules of the Superior Courts. Nor could that system undermine the entitlement of an interested party to apply for *habeas corpus* by way of an application to a judge of the High Court in the ordinary course. The procedure is in addition to other rights and procedures. It amounts to an exceptional means of access to the High Court that is for the benefit of prisoners. There is no warrant for disturbing it.

In addition the applicant makes certain complaints as the governance of prisons. Continual review by the courts of the ordinary day-to-day decisions of prison authorities carries a significant danger. In *Turner v Safley* (1987) 482 US 78 O'Connor J stated at 89:

> Subjecting the day-to-day judgments of prison officials to an inflexible strict scrutiny analysis would seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration. The rule would also distort the decision making process, for every administrative judgment would be subject to the possibility that some court somewhere would conclude that it had a less restrictive way of solving the problem at hand. Courts inevitably would become the primary arbiters of what constitutes the best solution to every administrative problem, thereby "unnecessarily perpetuat[ing] the involvement of the federal courts in affairs of prison administration." *Procunier v. Martinez*, 416 U.S. 407.

In *Foy v Governor of Cloverhill Prison*, the issue was visiting rights. But, where the issues are within the competence of the level of appreciation which ought to be afforded to governors, the court should not interfere. In that case, this court put the matter as follows at paragraph 26:

> It seems to me that once a decision is made in curtailment of such rights as continued notwithstanding the fact of imprisonment by way of remand or conviction, and which reasonably relate to the management of a prison and which are not arbitrary, discriminatory or wholly unreasonable, judicial review is not possible.

Some complaints are made on behalf of all three applicants. One particular complaint is apparently only made on behalf of the third named applicant. It is claimed that he has been wrongfully convicted for what is called "the purported murder of Bernard Smyth". No further details are supplied. In addition it is claimed that new facts have now emerged which will enable that case to be reviewed before the Court of Criminal Appeal. That may or may not be the case. All of the applicants have full access to legal representation under the criminal legal aid scheme where that is appropriate. The High Court cannot be obliged to release a prisoner convicted of murder simply because one of his friends asserts that he was wrongly convicted and that now there are new facts which will prove that he was always innocent. How can anyone know that this is true? Absolutely no particulars are provided. Even if full details were provided the constitutional entitlement of courts to interfere in a lawful conviction is channelled into appeals in the ordinary way.

The right to fair procedures guaranteed under the Constitution entitles the prosecution to investigate any alleged new facts in relation to this murder conviction, to search out countervailing facts and to consider submissions for any appeal hearing. The remedy of *habeas corpus* cannot bypass that constitutional procedure.