Neutral Citation Number: [2009] IEHC 257

THE HIGH COURT

2003 13989 P

BETWEEN

PETER CREIGHTON

PLAINTIFF

AND

IRELAND AND THE ATTORNEY GENERAL,

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

DEFENDANTS

JUDGMENT of Mr. Justice White delivered on the 25th day of May 2009

The plaintiff seeks damages in negligence in respect of injuries which he sustained on the 19th day of January 2003, whilst detained as a prisoner in Wheatfield Prison.

On that day, the plaintiff, together with a number of fellow prisoners, had been assembled in the Medical Centre within the prison, a location referred to by prisoners and warders alike as "The Cage", for the purposes of receiving medication in the form of methadone. Whilst awaiting his medication, the plaintiff alleges that suddenly, and without provocation, he was slashed about the face by a fellow prisoner, and then knocked to the floor, where he received further slashes to his back and abdomen before being rescued from further injury by prison officers. He cannot say how long the assault lasted, other than that it was less than a minute. At the time he was squatting on a bench and attacked from the side or behind. The Medical Centre is located on a main corridor of the Prison. It consists of five interconnected units. The units at either end are accessed by gates on the corridor. The three central units are interconnected by separating gates. Separating gates at either end give access to the end units. Prisoners are admitted at one end, the gate to the corridor is locked behind them, and they make their way through the central units to the far end unit, where Methadone is dispensed. The separating gate to the dispensary unit is locked, and prisoners are admitted thereto individually. This is the sole unit in which prison officers are present. Two officers are present, one to admit prisoners to the unit and to return prisoners to the corridor, and the other to verify the prisoner's entitlement to medication.

The lower half of the central units, as they face onto the corridor, are solid, and the upper half are barred, thereby permitting of prison staff having a limited view of the central units from the corridor.

There is a conflict on the evidence as regards the number of prisoners present in the Medical Centre, the length of time the plaintiff was in the Centre on the morning in question, and as to whether or not the separating gates between the central units were open or locked. However, I do not consider that I need resolve these conflicts.

The weapon used by the plaintiff's assailant was never recovered, a fact that astounds me. Details of the search for the weapon were not given. The plaintiff contends that the weapon was of a propriety brand, but prisoners are, apparently, given to improvisation when it comes to weapons. Again, I do not consider it necessary to determine the nature of the weapon involved. Clearly, it must have been a blade of some sorts.

I have received evidence from Mr. Roger Outram, a retired United Kingdom Governor, who I found to be an impressive witness. He considered that the defendants had failed in their duty of care. He was critical of the system, and considered the supervision to be inadequate, particularly in the light of previous assaults having taken place at that location. He had never seen a prisoner so seriously injured in the course of his career. Under cross examination, he conceded that you cannot prevent prisoners attacking fellow inmates.

The defendants made Discovery of assaults by prisoners on fellow prisoners at Wheatfield Prison during the period the 18th July, 2001 and 18th January, 2003. The discovered material shows that some twelve assaults occurred during the said period. Two of those assaults occurred in the Medical Centre, the first on the 8th July, 2002, when the weapon used was a sock containing a cup and an orange, and the second on the 30th August, 2002, when the weapon used was a knife. In all, three assaults involved the use of a knife or similar weapon.

There is no evidence before me of any risk evaluation having been carried out following these assaults at the Medical Centre, or of any steps having been taken to minimise the potential exposure of inmates to assaults at the Medical Centre.

The medical evidence in this case is agreed. I have been furnished with three reports from Dr. Patricia Eadie dated 1st September, 2004, the 24th May, 2007 and the 14th January, 2009, respectively. I have also been furnished with photographs of the injuries, and have had the opportunity of viewing them myself.

> The plaintiff is scarred on his face and on his trunk.
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> His right cheek: There is a 13cm scar, which extends from his right alar base transversely across his cheek to the region of his ear lobe. This scar is pale and thin anteriorly but the lateral one third of the scar is red and has stretched to approximately 3mm.
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> His nose: There is a 2.5cm scar which extends from the medial aspect of his right nostril to the left side of the

dorsum of his nose. This scar is thin and flat and overall has settled well. (He has an old scar approximately 1cm long on his left alar region).

He has a 10cm v-shaped scar on his right mastoid and scalp. This scar is pale and barely visible.

His left flank posterior: There are in total three scars in this area in an oblique direction with two of the scars lying very close to each other. One of these scars measures 10cm x 5mm and the second scar measures 8cm x 6mm. These scars are pink and flat. The third lies in a horizontal direction and measures 12cms.

His left abdomen: There is a 23cms scar extending from his umbilicus transversely towards the left side of his abdomen. The lateral 14cms of this scar are quite purple and hard. This is an area that underwent scar revision in November 2006.

The scarring is unlikely to improve with time, and further surgery is unlikely to make any superficial difference.

The law in relation to the duty owed by the State to detained persons is set out in *Muldoon v. Ireland* [1988] I.L.R.M. 367, wherein Hamilton P. at 369 states:-

"The standard of care required of the prison authorities in this case is to take all reasonable steps and reasonable care not to expose any of the prisoners to a risk of damage or injury. The law does not require them to guarantee that an incident like this could not occur or to guarantee that prisoners do not suffer injury during the course of their imprisonment. But the law requires the defendants, in this case Ireland and the Attorney General, to take reasonable care, and the two allegations made against the prison authorities in this case are: (1) that they did not have enough staff on duty in the recreation yard to exercise proper supervision; and (2) that they were wanting in care in permitting a prisoner to get on to the recreation yard with some sharp instrument, be it a blade or knife or some other instrument of that kind.

It is quite clear that the incident happened suddenly, was unprovoked and there was no prior warning, so that there were 50 prison officers in the recreation yard on that occasion in question, this incident could not have been prevented. Consequently, I will hold that the prison authorities were not negligent in not having enough prison officers in the yard to effect reasonable supervision and reasonable control.

That leaves then the other question of the instrument in the possession of the prisoner. The plaintiff was attacked from behind and had no opportunity of seeing what instrument was used, and he suggested either a knife that was taken from the kitchens or workshops in the prison, or a blade such as has been described by Mr. Scannell the Chief Officer.

The onus, as I say, on the prison authorities is to take reasonable care. They cannot guarantee, and cannot be expected to guarantee, that an incident like this cannot occur. The only way such an incident could be prevented is by searching every prisoner every time he moves from one area to another. We have evidence from Mr. Scannell about searches that are conducted, and the care is taken to prevent prisoners from having in their possession weapons or instruments that could be used for offensive purposes. It is realistic, in spite of all these steps, that occasionally an incident like this can happen, but I cannot see what more could have been done by the authorities by way of searching. More and more frequent searches would undoubtedly be regarded as excessive and could be argued to amount to inflicting harassment on the prisoners."

Muldoon v. Ireland was approved by the Supreme Court in *Bates v. The Minister for Justice and Others* [1998] 2 I.R. 81.

In addition the unreported High Court judgments in *Kavanagh v. Governor of Arbour Hill & Another* (Morris J., 22nd April 1993), *Boyd v. Ireland and Another* (Budd J., 13th May, 1993), *Howe v. Governor Mountjoy Prison & Others*, (O'Neill J., 31st October, 2006), and *Breen v. Governor Wheatfield Prison and Others*, (Gilligan J., 11th April, 2008), all found in favour of the defendants and against the plaintiffs.

I am satisfied that it would be unreasonable to expect, or require, the prison authorities to search each and every prisoner every time he exited his cell. Further, I am satisfied that the prison authorities could not have been reasonably expected to have been in a position to prevent an attack on the plaintiff.

Equally, however, given the fact that two attacks, involving the use of weapons, had occurred in the Medical Centre within the previous six months, I consider that the failure to place a prison officer or prison officers within the three central units of the Medical Centre and among the prisoners was a failure in the defendants duty of care to the plaintiff, but only to the extent that such a presence would have resulted in an earlier intervention in, and break up of, the assault. The absence of such a presence inevitably resulted in some time delay in officers going to the assistance of the plaintiff. Speed of intervention would have, in my view, lessened the extent of the injuries sustained by the plaintiff. I do not consider that such a presence could have prevented the head and facial injuries, but I consider, in all probability, it would have been likely to prevent the injuries which the plaintiff sustained to his flank and to his abdomen. I measure damages in respect of these injuries as being the sum of €40,000. Accordingly, there will be judgment in this sum in favour of the plaintiff.