

**THE HIGH COURT  
JUDICIAL REVIEW**

**2010 1016 JR**

**BETWEEN**

**STEPHEN WALSH**

**APPLICANT**

**AND**

**TIMOTHY McENIRY, JOHN PHELAN AND SHANE GERAGHTY**

**RESPONDENTS**

**JUDGMENT of Mr. Justice John MacMenamin 5th day of August, 2010.**

1. The facts of this application can be very simply outlined. The applicant seeks mandatory orders against the respondents to compel them to release to him files relating to his case. He contends that the intended respondents have shown flagrant disregard for the applicant's legal and constitutional rights and that the respondents being "paid servants or agents of the State" and being "officers of the courts" are fully obliged to release such files to the applicant.
2. In the affidavit verifying this application the applicant states that he was tried before the Central Criminal Court between December, 2009 and February, 2010. He avers that there is also pending a forthcoming trial before the Circuit Criminal Court on 18th October, 2010. He states that he brings this application owing to the failure of the respondents to meet his "many oral and written requests" made over a period of months by himself and family members for the release of files pertaining to his aforementioned cases.
3. The applicant alleges that there are no arrangements in being, either legislative or otherwise, whereby he or any other unrepresented prisoner can compel any member of the legal profession to release such files. He claims that there are no arrangements whereby either he or any other unrepresented prisoner can institute High Court civil proceedings against a member of the legal profession for breach of legal and constitutional rights. He asserts that since December, 2009 he has been seeking the release of his files without any success. He refers to correspondence which he has had with his solicitor, the solicitor who is the first named respondent, alleging that he has difficulties in recovering documents from counsel.
4. The affidavit goes on to make a wide range of other allegations concerning the applicants inability to conduct his own defence or prepare his own case from prison. He makes complaint about not being able to gain access to his own laptop computer; not being permitted to communicate directly in writing with the prosecution or the courts, or otherwise, with any degree of privacy. He complains that all mail in the prison is opened. He also complains that he is not permitted to apply to the High Court by way of judicial review or, by way of Article 40 inquiry *ex parte*, that is, without notice to the other side. The applicant also complains he is not permitted to access the District Court to apply for a criminal summons; not permitted to access the Central Office of the Four Courts by way of post or personally to pay the stamp duty fee for the issue of a summons; not permitted to access the courts by way of telephone; and not permitted to interview potential witnesses in relation to his forthcoming trial nor in relation to other intended proceedings which he intends to bring against the State and its representatives for malicious prosecution and breach of legal and constitutional rights. The applicant states that his reason for bringing this application is to exhaust all national remedies so that he may apply to the "European Convention on Human Rights" (*sic*).
5. By coincidence this Court has already ruled in a precisely similar case in proceedings entitled: The High Court Judicial Review [2010] No. 581 J.R. between John Ryan and the Governor of the Midlands Prison, State Appointed Solicitor namely John Herbert, Glanmore Suite, Parkhouse, Arthur's Quay, Limerick. Mr. Ryan, the applicant in that case, brought two applications in almost identical terms alleging that he, too, wished to recover his file from his solicitor. Mr. Ryan's complaint also, was that he was unable to procure the necessary plenary summons in order to initiate civil proceedings in the High Court. He complained that the Governor of the Midlands Prison did not have access to a computer connected to the internet and therefore could not assist him in procuring a form necessary for the initiation of civil proceedings.
6. As pointed out in that judgment, there is no inhibition whatsoever, in an applicant making arrangements otherwise to have any legal document presented to the Central Office for the purposes of issuing proceedings. The judgment also points out that an applicant could draft out the reliefs which he seeks and then either instruct another solicitor or relative or friend to endorse this in a plenary summons for the purpose of initiating proceedings.
7. Remarkably, the handwriting in Mr. Ryan's application was identical to that brought by the applicant herein.
8. As was pointed out in the case of *Ryan v. Governor of Midlands Prison* [2010] No. 581 JR and the preceding decision involving the same applicant and the respondent, any issue between the applicant and his solicitor is *not* a matter for judicial review or for an Article 40 application. The named respondents are not "State servants". They are solicitor and counsel retained by the applicant for the purposes of defending him in criminal proceedings. The only role played by the State is that the applicant's legal costs are discharged by the State. Consequently, this is not an appropriate matter for a judicial review. Judicial review is a public law remedy concerning jurisdiction or unfair procedures frequently involving applications or allegations against the State's servants or agents. The issue between the applicant and his solicitor is a private issue; it is not a public law issue. Consequently, if the applicant wishes to pursue any remedy against the respondents, the solution is entirely in his own hands, as was pointed out in the *Ryan* case. The matter is therefore *res judicata*.
9. Insofar as the applicant has other complaints, referred to in the affidavit and in this judgment, the named respondents are not the appropriate respondents at all. Clearly if the applicant has any concerns relating to his rights under the Constitution of Ireland or the

Convention he has a duty to raise them first, with the prison governor.

10. I should add that the question of prisoners' rights is an important one. The courts have a role in ensuring that rights are properly vindicated. Thus, in order to ensure that there is an easily available record of this judgment I will direct it should be made available in the event of any similar or kindred applications being brought by the applicant or other prisoners.

11. As the application poses no public law issue I will dismiss it.