

THE HIGH COURT

[2006 No. 1557 SS]

BETWEEN

EDDIE KERSHAW

APPLICANT

AND

THE GOVERNOR OF MOUNTJOY PRISON

RESPONDENT

RULING of Mr. Justice Clarke delivered the 27th of February, 2007.

1. The applicant ("Mr. Kershaw") applied in person from Mountjoy Prison for an order of habeas corpus. As appears from a ruling delivered by me in open court on 16th November, 2006, Mr. Kershaw complained as to the conditions in which he was held in that prison. However, for the reasons set out in that ruling, I was not satisfied that the issues raised by Mr. Kershaw in relation to the conditions in which he was held in Mountjoy prison were such as could, even on an arguable case basis, justify his release from prison. However I was satisfied, again for the reasons set out, that he had established an arguable case for an order of mandamus and damages.

Thereafter Mr. Kershaw was released from prison and made an application to me, in person, on 12th December, 2006 for the purposes of correcting the formal order made as a result of my ruling on 16th November. That formal order had not included an entitlement to seek damages amongst the issues which Mr. Kershaw was entitled to raise. However the order was not in conformity with the ruling which I had delivered and I, therefore, amended the order to allow Mr. Kershaw to pursue a claim in damages.

In the light of intervening events it was also necessary, on a number of occasions, to extend time in favour of Mr. Kershaw.

Mr. Kershaw would appear to have issued a notice of motion on foot of the leave order which seeks relief which goes beyond the specific issues in relation to which leave was, in fact, granted. He has applied directly to me for further leave to encompass those additional matters. This ruling is concerned with that application.

The first item of relief sought by Mr. Kershaw in his notice of motion, which was not covered by the leave order, seeks an order to the effect that the Governor of Mountjoy Prison is in contempt of court for an alleged failure to meet a commitment or undertaking given to Barrington J. in the *State (Richardson) v. Governor of Mountjoy Prison*. Mr. Kershaw was not a party to those proceedings and it does not seem to me that it is open to him to seek to enforce an undertaking given in those proceedings. If Mr. Kershaw is entitled to any orders in his own right, then that fact will be established in these proceedings. Obviously if there is any failure to comply with orders made in favour of Mr. Kershaw in these proceedings, then it will be open to him to invoke whatever aspect of the court's enforcement procedures might be appropriate. It does not, therefore, seem to me that this aspect of the additional grounds specified by Mr. Kershaw is appropriate and I do not propose extending the leave to cover that matter.

The next series of additional reliefs amount to declarations which seem to me to be incidental to the principal claim already made by Mr. Kershaw to the effect that the conditions in which he was held in Mountjoy (and in particular the so called "slopping out" practices giving rise to such conditions) were in breach of his legal entitlements. It does not seem to me that the declarations sought at items (iii) to (vii) in anyway extend the scope of the case in respect of which leave has already been granted. In the circumstances, not least because Mr. Kershaw represents himself, it would be inappropriate to exclude declaratory relief which, while not expressly the subject of leave, is clearly within the compass of Mr. Kershaw's complaint as originally made to the court. I would, therefore, propose extending the leave granted to include the declarations as specified by Mr. Kershaw at para. (iii) to (vii).

The final matter in respect of which Mr. Kershaw seeks an extension to the leave granted relates to a declaration to the effect that his right of freedom of expression has been violated by the Governor. The contention, as best I understand it, under this heading concerns the circumstances surrounding Mr. Kershaw's original application in writing to the court and the communication of the order of the court to him. It is contended that unreasonable barriers were put in the way of Mr. Kershaw's original application and that, indeed, the fact of the making of my original order in this matter was not brought to his attention in a timely fashion. It seems to me, on the basis of the written documents submitted to me by Mr. Kershaw, that he has made out an arguable case to this effect and I would propose giving him leave under that heading as well. It seems to me that it would be convenient to have those issues dealt with as part of these proceedings, as the issues arise directly from the circumstances in which these proceedings were brought to the court. I would, therefore, propose giving leave in respect of para. (viii) as well.

In summary I am, therefore, prepared to extend my previous order by the addition of the grounds set out at (iii) to (viii) of Mr. Kershaw's statement of grounds. In accordance with normal practice any such grant of leave is without prejudice to any contention that can be made on the part of the Governor that the delay in adding such grounds has given rise to prejudice or is otherwise such as might disentitle Mr. Kershaw to relief. Any such issues, should they be raised on the part of the Governor, are a matter to be dealt with by the judge who will ultimately hear the substantive judicial review application.