

THE HIGH COURT

PHILIP LEONARD

AND

THE GOVERNOR OF WHEATFIELD PRISON

2009 712 JR

APPLICANT

RESPONDENT

Judgment of Mr. Justice Charleton delivered on the 24th day of July, 2009

1. This is a personal application by Phillip Leonard who is currently a prisoner in Wheatfield Prison. In his application, Mr. Leonard seeks an order of *certiorari* because, as he puts the matter:-

"Limited resources for my release date which is in dispute and I should be released in August 2009, Governor will not show cause for holding me until January 2010."

2. I have made enquiries and brought forward the relevant warrants which apply to this applicant. It is because there are two such warrants and in respect of three different charges that the possibility of confusion arises. At the Circuit Court sittings on 23rd January, 2007, in County Louth, the applicant pleaded guilty to one of two counts, namely that on 8th August, 2005 at An Post, Boyne Shopping Centre, Drogheda, he attempted to rob Emma Monaghan. For this, he received four years imprisonment which was backdated to 19th August, 2006. A second charge, in respect of the same date at the same place, of attempting to rob Yvonne Madden was not proceeded with. I quote the operative part of the warrant:-

"Four years imprisonment from 19/8/06. Suspend final 18 months of sentence on defendant entering bond to keep the peace *etc.* in sum of €200 for 18 months from date of release. Entered into in open court."

In effect, therefore, the applicant was scheduled to serve a 30 month sentence from 19th August, 2006.

3. One moves forward from that sentencing date of 23rd January, 2007 to the next sittings on the Circuit Court held in County Meath in Trim on 6th February, 2007. On the first day of the sittings in Trim, the applicant pleaded guilty to a crime of burglary. No details apart from that are given in the order; that does not matter as I am not entitled to act in any way in review of the length of that punishment. The sentence is recorded as follows:-

"Four years custodial sentence to run concurrent with two and a half years sentence he is already serving which commenced on the 19/8/06. Allow leave for appeal. Certify for legal aid and two counsel."

4. This second sentence was not backdated, in contrast to the first. The normal method of calculating a sentence is to divide the actual time period to be served by a prisoner into days, as opposed to months or weeks. This is then divided by four and multiplied by three. Since, in the ordinary course, a prisoner is entitled to remission of a quarter of his or her sentence for good behaviour, the release date is three-quarters of the way through the term of the sentence. Of course, such remission can be lost in the event of any infringement of the prison rules. A straightforward calculation of a four year sentence imposed on 6th February, 2007, would mean that it would not ordinarily expire until a date that would be in or around 6th February, 2010. Clearly, if the applicant is doing better than that, he has no cause for complaint before this court.

5. Reading the papers which have been furnished to me by the Governor's Office at Wheatfield Prison, I infer that there has been some issue raised by the applicant as to his correct release date. I say this because on 10th June, 2009, the Governor wrote to the applicant's solicitor in the following terms:-

"I refer to your correspondence dated 26 May, 2009, regarding your client Phillip Leonard. On 23 January 2007, at Dundalk Circuit Court, Phillip Leonard was sentenced to serve four years imprisonment, with the final 18 months suspended, sentence to commence with effect from 19 August 2006. On 6 February, 2007, at Trim Circuit Court, Phillip Leonard was sentenced to serve four years imprisonment, to run concurrently with a two and a half year sentence already being served, which commenced on 19 August, 2006. The commencement date of this sentence was 6 February 2007. Following a review of the warrants and recalculation of the sentences, I can confirm that Phillip Leonard's sentence will expire on 5 February, 2011. He is due for release on remission on 16 January, 2010. This date also reflects the loss of 31 days remission. I trust that the matter is now clarified and regret any inconvenience caused by our previous correspondence."

6. It could be that some potential confusion was caused by the backdating of the first sentence to a date approximately five months previously. As to the warrant in respect of the second sentence, that of 6th February, 2007, this is the operative one which now holds the applicant in custody. On the face of that sentence there is no doubt that the commencement date was not backdated. The ordinary rule, therefore, that the sentence commences on the date on which it was imposed is operative. On the basis of the ordinary calculation of the expiry of that sentence, there is nothing to suggest to me that the Governor's calculation of the applicant's release as being 16th January, 2010 is incorrect.

7. For those reasons, I must refuse this application for judicial review.