

## THE HIGH COURT

[2012 No. 54 J.R.]

BETWEEN

GARY KIRBY

APPLICANT

AND

THE GOVERNOR OF LIMERICK PRISON

RESPONDENT

**Judgment of Mr. Justice Feeney delivered on 27<sup>th</sup> day of January, 2012.**

1. The applicant is currently a prisoner in Limerick Prison and has brought an application in person seeking judicial review. That application is dated the 12<sup>th</sup> January, 2012.
2. In the statement required to ground application for judicial review by a personal applicant, Gary Kirby sets out the basis upon which relief is sought. He states that he wishes to take the Governor of Limerick Prison to court as he received two months "in block" and when finished he would be required to do six months "screen visits". Gary Kirby goes on to state that he only seeks to take action in relation to the screen visits. The basis upon which he seeks to take action is that Limerick Prison is, in his words, the only one to make such a rule and it does not apply in other prisons in Ireland. He claims that as a result of the imposition of screen visits for a six months period that he will receive eight months punishment in total.
3. The relief sought by Gary Kirby is identified as *mandamus*. An order of *mandamus* is an order to compel the performance of a legal duty of a public nature. For such a relief to be granted performance of the legal duty must have been demanded and refused. The facts relied upon by Gary Kirby do not identify the performance of the legal duty which he claims lies on the Governor of Limerick Prison nor does he identify a demand and a refusal. The facts identified by Gary Kirby are more consistent with a potential claim for *certiorari*. By order of *certiorari* a court can quash a decision of a public body made in excess of or in abuse of its jurisdiction or where an error appears on the face of the record. In this case it appears that Gary Kirby is endeavouring to quash the decision of the Governor of Limerick Prison to impose screen visits for a period of six months. The Court will proceed on the basis that the application brought by Gary Kirby is in fact an application for *certiorari*.
- 4 Gary Kirby in his application fails to provide sufficient information or facts which could lead to a court granting an order of *certiorari*. Gary Kirby fails to identify the facts or circumstances which gave rise to the Governor of Limerick Prison imposing a sanction on Gary Kirby under the relevant rules and regulations. He fails to identify any ground as to why the Governor of Limerick Prison might have acted in excess or in abuse of his jurisdiction other than for one claim which is a claim that Limerick Prison is the only prison where a screen visit rule is imposed. The fact that Limerick Prison is the only prison where such a rule is imposed does not by itself result in a court having to conclude that such a decision is made in excess or in abuse of jurisdiction. It is for Gary Kirby as applicant to clearly set out the circumstances and facts which support a claim that the Governor of Limerick Prison has acted in excess of or in abuse of his jurisdiction. Absent those details this Court is placed in a position that there is insufficient and inadequate information available to it to enable it to make a determination that the Governor of Limerick Prison made a decision in relation to Gary Kirby that was in excess of the Governor's jurisdiction nor that the decision in relation to Gary Kirby amounted to an abuse of jurisdiction.
5. For the reasons set out in this judgment, the Court declines the application for judicial review sought by Gary Kirby.

APPROVED: Feeney, J