

THE HIGH COURT

2006/71/SS

IN THE MATTER OF ARTICLE 40.4.2 OF THE CONSTITUTION

BETWEEN

LEONARD DUMBRELL

APPLICANT

AND

THE GOVERNOR OF St. PATRICKS INSTITUTION

RESPONDENT

Judgment of Finnegan P. delivered on the 31st day of January 2006.

1. On the 6th October 2005 the Applicant was sentenced to three consecutive terms of imprisonment, the term of nine months with a term of three months consecutive thereto and a further three months consecutive to that three months. His release date with full remission would be the 16th January 2006. He was notified that his release date having regard to loss of remission would be the 6th April. On the return to an Order which I made on the 23rd January 2006 it was disclosed that the Applicant during his term of imprisonment has been convicted on 29 occasions of breaches of prison discipline. Various penalties were imposed including loss of remission and the total loss of remission is 98 days. However in calculating a release date a prisoner is allowed remission on lost days. The practice in the Prison Service for calculating a release date involves converting the sentence to days (in this case 456 days) adding on lost remission (in this case 98 days) and arriving at a total (in this case 554 days) remission of $\frac{1}{4}$ is then applied reducing the 554 days to 415 days. Against this the Applicant is entitled to credit for time served between conviction and appeal 64 days. The result is that the total time to be served by the Applicant is 351 days and his release on the basis of this calculation is the 29th March 2006.

2. In the Applicant's case there was a miscalculation in that I was initially informed that his release date was the 6th April. On the evidence of the Deputy Governor of St. Patricks Institution Mr. Declan Murphy I am satisfied that this miscalculation occurred as a result of human error. The calculation is carried out on computer but is then checked manually. Mr. Murphy believes that the error occurred on the input of information to the computer and was not noticed as the Officer who would normally carry out the manual check was absent. He was however sufficiently concerned that an error occurred that the release dates for 177 other inmates were checked both on computer and manually and were found to be correct. Upon this basis I accept that the most likely cause for the miscalculation of the Applicant's release date was human error as described in evidence by Mr. Murphy.

3. A number of issues were raised by Mr. O'Higgins on behalf of the Applicant. Firstly the constitutional right to liberty is so important that a prisoner's release date should never be a matter of uncertainty. The Applicant was entitled to know at all times the date upon which he is entitled to be released. The system for ascertaining that date has to be certain and consistent. Secondly it is urged upon me that the manner in which loss of remission should be applied to a prisoner's sentence should be that which is most beneficial to him.

4. As to the matters which I firstly mention Counsel described the present system as random, chaotic and uncertain. Having regard to the evidence of Mr. Murphy the Assistant Governor I am satisfied that this is not so. Loss of remission is applied consistently and the manner in which it is calculated is certain. Nothing in what has been urged upon me would justify the release of the Applicant on this application.

5. As to the matter secondly raised it has been demonstrated to my satisfaction that the application of loss of remission to the Applicant in a different manner would be more beneficial to him and would result in an earlier release date: however the application in the manner suggested could result in the case of other prisoners to a later release date. The Applicant in this case received three separate sentences to be served consecutively the order in which they are to be served appearing clearly from the committal warrants – 9 months followed by 3 months followed by 3 months. If loss of remission incurred during the 9 months sentence were to be applied to that sentence only this would result in an earlier release date for the Applicant having regard to the number of days loss of remission incurred by the Applicant during the currency of that sentence exceeding the total of remission which he could earn.

6. The Prisons (Ireland) Act 1907 provides in section 1 thereof as follows –

"Provision may be made by prison rules for enabling a prisoner sentenced to imprisonment, whether by one sentence or cumulative sentences, for a period prescribed by the rules, to earn by special industry and good conduct a remission of a portion of his imprisonment, and on his discharge his sentence shall be deemed to have expired."

7. Effect is given to this section by the Prison Rules 1947 Rule 38 which provides as follows –

"(1) A convicted prisoner sentenced to imprisonment, whether by one sentence or cumulative sentences, for a period exceeding one calendar month, shall be eligible, by industry and good conduct to earn a remission of a portion of his imprisonment not exceeding one fourth of the whole sentence provided that the remission so granted does not result in the prisoner being discharged before he has served one month."

8. I am satisfied that the use in the Act and in the Rules of the adjective "cumulative" displays an intention that remission should be applied to both concurrent and consecutive sentences having regard to the total of the term imposed and not to individual components of the total sentence. The system which I have described for calculating the effect of loss of remission on release date which is operated by the prison authorities fulfils the requirement of the Statute and the Rules: the system postulated on behalf of the Respondent does not. The system in operation affords certainty not just to the prisoner but also to the officer administering prison discipline. In imposing an appropriate punishment of loss of remission he would be uncertain as to whether that loss would be effective or not as it might become ineffective by reason of other losses of remission whereby the total loss of remission exceeded one quarter of the sentence. In cases where there had clearly been a loss of the full remission the Officer would be denied an opportunity to impose an appropriate penalty for a serious breach of discipline. If loss of remission could be incurred with impunity there would be less incentive for the prisoner to observe prison discipline. There would be inconsistency as between prisoners – one prisoner suffering the total loss of remission imposed upon him for a breach of prison discipline while a person in the Applicant's position by reason of repeated breaches of prison discipline would not suffer the loss of remission imposed upon him. This would be clearly unsatisfactory. It is I am satisfied in the interests of prisoners as a whole and indeed in the interest of the prison authorities and of good discipline within the prison system that there should be a single method of application of loss of remission and that that should be in accordance with the intention expressed in the Statute and the Prison Rules. The method of calculation adopted is clear and consistent and in conformity with the Statute and the Prison Rules.

9. In these circumstances I make no order on the application.