THE HIGH COURT

[Record No. 2017/8 SSP]

IN THE MATTER OF AN APPLICATION PURSUANT TO ARTICLE 40.4.2 OF THE CONSTITUTION OF IRELAND AND IN THE MATTER OF AN APPLICATION FOR HABEAS CORPUS BY DARREN O'HALLORAN AT PRESENT IN CUSTODY OF LIMERICK PRISON

DARREN O'HALLORAN

APPLICANT

AND

THE GOVERNOR OF LIMERICK PRISON

RESPONDENT

JUDGMENT of Mr. Justice Eagar delivered on the 10th day of May, 2017

1. This is a judgment on an application by the applicant Darren O'Halloran for an inquiry into his detention at Limerick prison. The Court directed an inquiry into his detention. The Court offered the applicant the opportunity of legal representation, which he declined, and he opted to present his case himself.

2. Counsel for the respondent provided the Court with the certificate of the applicant's detention, and also the affidavit of Mark Kennedy, Governor of Limerick Prison, Mulgrave Street, Limerick.

Applicant's Submissions

3. The applicant stated that he had been scanned, and put on a 'boss chair'. He stated that he told the prison officer he had 'nothing on [him]'. He argued that he had been wrongfully subject to rule 62 of the prison rules. As a result of this, he was placed in a cell on his own. He states that he repeatedly told the prison officers that he 'genuinely had nothing on [him]'. He states that he lied to the prison officers, in telling them that he had swallowed a razor blade. He did this so he could be brought to hospital, so that he could be x-rayed, in order to prove that he had nothing on his person. He states that the doctor in hospital told him that there was 'nothing on him'. He states that on returning to hospital, he was put back into a padded cell 'for nothing'.

Counsel for the Respondent's Submissions

4. Counsel for the respondent referred to the affidavit of Mark Kennedy, Governor of Limerick Prison. He contests the applicant's contention that the applicant was placed on Rule 62 for three weeks. He provides the dates that the applicant was placed on Rule 62. He states that the applicant was placed on Rule 62 on each occasion because a positive reading was received from a 'non linear junction device' when the applicant was scanned. This device is used to detect active and passive electronic devices which a person may have hidden in or about their person. He states that this indication caused him to have a reasonable belief that the Applicant had a prohibited article on his person and as a result posed a significant threat to the maintenance of good order or safe or secure custody.

5. Mark Kennedy further states that on the 14th April, 2017, the applicant claimed he had swallowed razor blades and was brought to hospital for an x-ray where no metal object was detected. He admitted that he had lied. He was not told by the hospital that he had nothing whatsoever on his person in the nature of an electronic device, or an article containing circuitry. He states that he is aware from his experience that 'beat the boss' phones are made from plastic and contain little or no metal.

6. Counsel cited *Leroy Roche aka Dumbrell v Governor of Cloverhill Prison* [2014] IESC 53, where the Supreme Court reviewed the law in relation to sentenced prisoners and their entitlement to article 40. Charleton J stated that unless an order of a court shows an invalidity on its face, the correct remedy is the remedy of appeal. Where there is no invalidity on the face of an order, the route of constitutional and immediate remedy of article 40 is not the correct approach. As was stated by Denham C.J. in *FX v The Clinical Director of the Central Mental Hospital* [2014] IESC 01,

> "An order of the High Court which is good on its face should not be subject to an inquiry under Article 40.4.2 unless there has been some fundamental denial of justice. In principle the appropriate remedy is an appeal to an appellate court, with, if necessary, an application for priority."

7. Counsel further referred to *Daniel McDonnell v. The Governor of Wheatfield Prison* [2015] IECA 216. In that case, the Court of Appeal held that orders made in the High Court had dictated to the Governor how a prison ought be managed, and this was not the function of the courts, unless it was imperatively necessary to safeguard fundamental constitutional rights. Counsel cites this in support of her arguments, that in order to be released under article 40, the applicant would have to show that the Governor's actions had been so extreme, such that they violated his human rights.

8. On this basis, counsel for the respondent argues that the applicant's certificate for detention shows jurisdiction on it's face, and he has not shown that in the course of his detention, he has been subject to serious injustice, such that his rights have been violated. Therefore, habeus corpus is not the correct remedy for the applicant to seek. She argues that the applicant has the appropriate remedy of judicial review available to him. His complaints could be dealt with in this manner, and if necessary, he could apply for priority on the judicial review list.

Decision

9. This Court finds that article 40 is not the appropriate remedy for the applicant to seek. The more appropriate means by which the applicant could voice his complaints would be through an application of judicial review. Leroy Roche aka *Dumbrell v Governor of Cloverhill Prison* [2014] IESC 53 represents a correct statement of law, and I am obliged to follow it. The nature of the applicant's complaints do not entitle him to seek relief under article 40.

10. In these circumstances, the Court refuses to grant the applicant relief by way of habeus corpus.