

THE HIGH COURT

[2012 No. 353 JR]

BETWEEN/

MARK MCMENAMIN

APPLICANT

AND

GOVERNOR OF WHEATFIELD PRISON

RESPONDENT

JUDGMENT of Mr. Justice Hanna delivered on the 29th day of June 2012.

This prisoner makes an application on a document dated 16th April, 2012 and received by me on 11th June, 2012 under cover of letter dated 29th May. In it he seeks leave to bring judicial review proceedings by way of mandamus against the respondent. In his brief handwritten statement grounding his application he says that he wishes to have access to a hospital and a liver specialist for treatment of what he describes as an extremely serious illness. It is implicit that he alleges that the respondent is not facilitating such access.

In my judgment in *O'Reilly v. Governor Wheatfield Prison* (High Court Unreported 22nd June, 2007 at pages 1 and 2) a brief summary of the relevant law is to be found.

"It is well established that inadequate medical treatment can amount to a breach of a prisoner's constitutional rights to bodily integrity, cruel and unusual punishment and negligence on the part of the prison staff. The prisoner is not, however, entitled to the medical treatment of his choice (see *McDonagh v. Frawley* [1978] I.R. 131). For example, he is not entitled to demand that his illness is treated by any particular type of medication or indeed by any medication at all. Further, the Prison Service is not under a duty to provide the best medical treatment available (see *The State (C) v. Frawley* [1976] I.R. 365).

However, the applicant is entitled to receive some sort of treatment for any illness from which he suffers. If the treatment which he is receiving in hospital is viewed by the prison authorities as being appropriate medical treatment then in the ordinary course of events one would expect attendance for consultations at the treating hospitals a necessary part of such treatment."

The rather bare facts of that case are not dissimilar to Mr. Mc Menamin's complaint. Mr. O'Reilly alleged that the prison authorities were failing to enable him to keep appointments with a heart specialist. I went on to make the following observations at page 2.

"However, if what the applicant says is correct, why would the prison authorities 'prevent him from keeping his appointments? There may well be security implications involved. Maybe the prison authorities properly take the view that the appointments are unnecessary and that the applicant is receiving adequate medical treatment in prison. I simply do not know.

In that the applicant does raise the possibility that the prison authorities are failing to enable him to attend at hospital for what I presume are medical consultations in the course of his treatment for a heart condition at least some enquiry is called for. However, I would not make any order that would amount to an interference with the jurisdiction of the prison authorities *inter alia* to determine the location of prisoners both inside and outside the jail without hearing from the respondent."

My approach on that occasion is set out at pages 2 and 3 of my judgment.

"Accordingly, I will direct that this matter be returnable before me at 10.30 am on any Monday as may be suitable to both parties but no later than 16th July, 2007. The Central Office of the High Court is to be notified of the date by the respondent no later than close of business on the preceding Thursday. The respondent should then be in a position to confront the applicant's complaints either by affidavit or oral evidence. I direct that both the applicant and the respondent be notified of the making of this order by the Central Office by telephone and, fax and post. I will give the applicant liberty to apply for a production order should he wish to be present but such application must be made on notice to the respondent should the respondent wish to oppose such application.

Should the parties resolve their differences in the meantime I would ask that the Central Office be notified by both parties and the matter need not be listed.

I should observe that this is a perfect example of a case which could be dealt with promptly by video link with the prison."

I will adopt a similar approach in this instance because an allegation, albeit implicit, of deprivation of access to hospital and specialist treatment in the face of the extremely serious liver disease from which the applicant claims to suffer warrants enquiry. I will, however, vary my directions in *O'Reilly*. Firstly, the applicant is given liberty to bring a motion seeking mandamus on four clear days notice to the respondent before me, provided I am available, should he feel that such course is necessary. He must, however, accompany such notice with a comprehensive statement grounding his application and setting out in some detail the factual background to his complaint and this should accompany the motion. If I am not available, and any genuine issue of medical emergency should arise, such application may be brought to the Judicial Review list. Secondly, the respondent is to be notified of this order in the manner set forth in my judgment in *O'Reilly* as cited above. Thirdly, both parties are to be furnished forthwith with a copy of this judgment. Fourthly, the applicant can apply for a production order on two clear days' notice to the respondent should he wish to appear in person. The respondent is at liberty to oppose such application. Finally, if there are some grounds for complaint then,

although I cannot direct this, I would urge the parties to resolve the matter without further recourse to the courts.