

THE HIGH COURT

2009 1183 JR

BETWEEN

PAUL MCCARTHY

APPLICANT

AND

THE GOVERNOR OF MOUNTJOY PRISON

RESPONDENT

JUDGMENT of Mr. Justice John Edwards delivered on 25th day of November, 2009.**Background to the application**

The applicant is a prisoner in Mountjoy Prison where he is serving a sentence of 5 years for robbery, contrary to s. 14 of the Criminal Justice (Theft and Fraud Offences) Act, 2001 imposed on him by Her Honour Judge Delahunt in the Dublin Circuit Criminal Court on the 6th of February 2009. The applicant claims to be illiterate and that at the time of imposing sentence upon him Judge Delahunt made a recommendation that the applicant should, if possible, have access to education and receive literacy training while in prison. The applicant claims that notwithstanding the Judge's recommendation no such facilities have been provided for him. He therefore seeks an Order of Mandamus compelling the Governor of Mountjoy Prison to provide him with the necessary facilities.

The Prison Rules

The Court is conscious of the fact that the control and management of the nation's prisons, and of prisoners within the prison system, are matters that have been entrusted by the legislature to the executive, and in respect of which the executive enjoys a wide discretion, subject to the constitution and the law. Consistent with this there is a scheme of legislation in place that sets specific parameters to the aforementioned discretion and which informs the way in which it ought to be exercised. The relevant legislation consists of the Prisons Acts 1826 to 2007 and the regulations made thereunder, and in particular, the Prison Rules 2007 which are contained in S.I. 252 of 2007. It is appropriate at this point to consider certain specific provisions of the Prisons Act 2007 and of the Prison Rules 2007.

Section 35 of the Prisons Act 2007 empowers the Minister for Justice, Equality and Law Reform to make prison rules. Subsections (1) and (2) respectively of s.35 provide:

"(1) The Minister may make rules for the regulation and good government of prisons.

(2) Without prejudice to the generality of subsection (1) and to Part 3,

such rules may provide for—

(a) the duties and conduct of the governor and officers of a prison,

(d) the provision of facilities and services to prisoners, including educational facilities, medical services and services relating to their general moral and physical welfare,

The Prison Rules 2007 were made by the Minister pursuant to his power under s.35 of the 2007 Act. Rule 110 thereof provides:

"110. (1) In so far as is practicable, a broad and flexible programme of education shall be provided in each prison to meet the needs of prisoners, through helping them -

(a) cope with their imprisonment,

(b) achieve personal development,

(c) prepare for life after their release from prison, and

(d) establish the appetite and capacity for lifelong learning.

(2) In particular, the programme referred to in paragraph (1) shall:

(a) encourage prisoners to participate in educational activities organised in the prison,

(b) give special attention to prisoners with basic educational needs, including literacy and numeracy needs.

(3) Subject to the maintenance of good order and safe and secure custody, each prisoner shall, in so far as is practicable, be permitted to participate in education as provided in the prison.

(4) The Governor, prison officers and all persons employed or engaged in the provision of services to prisoners shall actively encourage and facilitate participation in education as provided in the prison.

(5) The programme referred to in paragraph (1) may be provided in partnership with community based education bodies.

(6) In so far as is practicable, a library and information centre shall be provided in each prison, providing regular access to a wide range of informational, educational and recreational resources catering for the needs and interests of all prisoners.

(7) Subject to the maintenance of good order and safe and secure custody, each prisoner shall be entitled to avail of the library service provided in the prison at least once a week and be actively encouraged to make full use of it.

(8) (Not relevant)

(9) (Not relevant)"

Decision

The first thing to be said is that the requirement under the rules to provide "a broad and flexible programme of education" is qualified by the phrase "in so far as is practicable". No information has been provided to the Court as to why the applicant has not been afforded access to education and literacy training, and so the Court cannot foreclose on the possibility that there may be specific reasons why it is impractical to do so in the applicant's particular case. That said, because of the positive obligation on the respondent under Rule 110(4) of encouragement and facilitation it seems to me that the applicant has raised an arguable point as to whether the Prison Rules are being complied with in his case, and I am therefore disposed to grant him leave to apply for an order of mandamus directing the respondent to comply with the Prison Rules and/or a declaration that the respondent has failed to comply with the Prison Rules. The latter relief is being allowed as there may be arguments, based on the doctrine of separation of powers, as to why the former relief would be inappropriate in the circumstances of the case.

The applicant clearly did not fill up the documentation in this case himself although he has appended his signature to it. It is clear that because of his lack of education and his illiteracy that he will need legal assistance to prosecute these proceedings. I will grant the applicant a recommendation under the Attorney General's scheme so that he may instruct a Solicitor and one Counsel to represent him. I will fix the 8th of December 2009 as the return date in the first instance and will ask my registrar to forward a copy of this judgment to the Chief State Solicitor on behalf of the Governor of Mountjoy Prison. A formal order will be perfected in due course and furnished to the applicant who should then arrange for it to be served formally on the Chief State Solicitor at Osmond House, Little Ship Street, Dublin 8, together with a copy of his "Statement Required to Ground Application for Judicial Review By a Personal Applicant" and his affidavit sworn on the 31st of October, 2009.

Unless and/or until the applicant has instructed a legal team he is hereby granted liberty to apply in writing to the High Court, and on at least four days notice to the Governor of Mountjoy Prison, for a production order if he wishes to be personally in attendance on the 8th of December, 2009. However, once he has instructed a solicitor (assuming he is willing to do so) the solicitor must thereafter make applications of that sort, or any other necessary applications, in the normal way.