Neutral Citation Number: [2012] IEHC 511

The High Court

2012 No. 2229 SS

Between

Gerard Kane

Applicant

And

The Governor of the Midlands Prison

Respondent

Judgment of Mr Justice Charleton delivered on Tuesday the 10th day of December 2012

The applicant describes himself as a remand prisoner in the Midlands Prison. As recently as September of this year, Peart J ruled on a similar application made by a fellow prisoner pursuant to the informal arrangement whereby prisoners are entitled to complain to the High Court as to their detention, or the conditions thereof. Under that procedure, if it is necessary the High Court will make enquiries as to the circumstances of the prisoner and then issue a ruling. It has never been the case that a sworn affidavit is required for this form of application. Instead, communications are made by way of letter and these are sometimes accompanied by a detailed written statement as to why the prisoner feels that his rights are being denied or that such benefit as he is entitled to under the prison rules are being withheld from him.

The major complaint of the applicant is that in order to initiate this procedure he must spend €40 on getting a commissioner for oaths to attest to the swearing of an affidavit. This is not correct. Article 40.4 of the Constitution declares that no "citizen shall be deprived of his personal liberty save in accordance with the law." This provision is not empty and it is specifically buttressed by article 40.4.2 which allows an application testing the legality of their detention of any person within the State to be made to the High Court. A solemn duty is cast on each and every judge to whom such an application is made to "forthwith enquire into the said complaint". If the detention is unlawful then the High Court is required to "order the release of such person from such detention unless satisfied that he is being detained in accordance with the law." The Constitution is a law in itself as well as being the fundamental law of Ireland. The entitlement to this procedure is not to be adjusted or abridged by any form of rule which undermines the swift and direct right of anyone within the State to challenge the legality of any apparent case of wrongful imprisonment or detention. Therefore, on such an application the High Court may adopt such procedures as are suitable to a proper enquiry into the issue of lawfulness of detention. Quite often, the prison authorities will proceed to indicate why it is claimed detention is lawful and such justification may be challenged by contrary evidence, by submission or by cross-examination. If other procedures better suit the nature of the case, these may be followed.

Judges of the High Court have visitation rights over every prison in the State. Under a procedure of origin that perhaps dates back to the founding of the State, prisoners have an entitlement to write to the High Court to seek to vindicate their rights. This procedure can be abused. It is pointless to deal with application after application where no substance is shown to any complaint that a prisoner might make. The writing is so important, and so underpinned by constitutional imperative, that each such application is scrutinised.

The complaint of the prisoner on that ground must therefore be rejected. Insofar as the prisoner also complains that the prison staff and the prison governor are undermining his rights, nothing in the several pages of legalese that has been presented give any hint other than the careful application to their work of the correctional officers. It is not necessarily always correct to second-guess or to attempt a different view from those who are actually pursuing the rehabilitation of prisoners. In *Turner v Safley* (1987) 482 US 78 O'Connor J stated at 89:

> Subjecting the day-to-day judgments of prison officials to an inflexible strict scrutiny analysis would seriously hamper their ability to anticipate security problems and to adopt innovative solutions to the intractable problems of prison administration. The rule would also distort the decision making process, for every administrative judgment would be subject to the possibility that some court somewhere would conclude that it had a less restrictive way of solving the problem at hand. Courts inevitably would become the primary arbiters of what constitutes the best solution to every administrative problem, thereby "unnecessarily perpetuat[ing] the involvement of the federal courts in affairs of prison administration." *Procunier v. Martinez*, 416 U.S. 407.

The prisoner also complains that his trial date has been adjourned from time to time. Specifically, he complains that O'Malley and Sheehan JJ had either adjourned his trial or, more than confusingly, failed to adjourn his trial. Their reasons for doing so are not articulated. It is within the province of any judge taking a list of trial dates to have regard to the importance of the pending case, the amount of court time available in which to do it, the needs and requirements of the litigants, whether a prisoner is in custody on remand on bail and whether other proceedings need to be given priority so that the trial which is pending may need to be put back. There is nothing in anything which the prisoner has put before the court to indicate that there has been any improper use of the listing power of any judge whereby this prisoner has been given any less fair treatment than any other prisoner. The resources of the courts are limited; the demands of litigants for a swift and fair hearing are understandable; but the result is that the courts, while doing their best, may not be able to accommodate every application. Instead, the judge dealing with a list must take into account the various pressures on court time while assessing, as far as practicable, how much time be allocated to a case and in what order they be heard. There is nothing in the prisoner's application which suggests any breach of this commonsense approach much less any undermining of any fundamental right which he pleads. Furthermore, nothing in the application gives an entitlement to an order releasing him from detention. The decision in relation to the grant of an order of habeas corpus in *The State (McDonagh) v Frawley* [1978] IR 131 elucidates that principle. At p 136 O'Higgins CJ stated:

> The stipulation in Article 40.1 … that a citizen may not be deprived of his liberty save "in accordance with law" does not mean that the convicted person must be released on habeas corpus merely because some defect or illegality attaches to his detention. The phrase means that there must be such a default of fundamental requirements that the detention may be said to be wanting in due process of law.

Regrettably, the prisoner and those advising him, very unwisely in the view of this Court, must bear in mind the limited nature of the court's jurisdiction absent a substantial complaint; *Foy v Governor of Cloverhill Prison* [2010] IEHC 529 paragraphs 18-19.