THE HIGH COURT

JUDICIAL REVIEW

[2014 No. 694 J.R.]

BETWEEN

JOHN RYAN

APPLICANT

AND

THE MINISTER

FOR JUSTICE AND EQUALITY

AND

THE IRISH PRISON SERVICE

AND

IRELAND

AND

THE ATTORNEY GENERAL

RESPONDENTS

JUDGMENT of Ms. Justice Faherty delivered on the 6th day of February 2015

1. On the 17th November 2009 the applicant was convicted of two offences, namely one count of rape and one count of sexual assault. On the 8th February 2010 he was sentenced to 7 years imprisonment in respect of the rape conviction and 5 years for the sexual assault, both to run concurrently.

2. The applicant lodged an appeal against conviction which was heard and refused by the Court of Criminal Appeal on the 9th December 2011. The Director of Public Prosecutions lodged an application pursuant to s. 2 of the Criminal Justice Act 1993 and that application was heard on the 9th July 2012. The Court of Criminal Appeal allowed the appeal and substituted as sentence of 10 years imprisonment with 3 years suspended. The Court of Criminal Appeal also ordered 5 years post release supervision of the applicant under the Sex Offenders Act 2001.

3. The applicant's anticipated release date on the basis of one quarter remission, in accordance with Rule 59 (1) of the Prison Rules 2007-2014 is the 16th February 2015.

The applicant contends that he is entitled to enhanced remission of sentence in excess of one quarter. In these proceedings, he seeks an order of *certiorari* quashing the decision of the first named respondent dated the 15th October 2014 wherein the first named respondent declined to grant the applicant enhanced remission pursuant to Rule 59 (2) of the Prison Rules 2007-2014.

The law on remission

4. As is clear from the letter furnished to the applicant on the 15th October 2014, this application for enhanced remission was considered by the first named respondent under Rule 59 (2) of the 2007 Prison Rules (as amended). It provides:-

> *"(2)(a) A prisoner who has engaged in authorised structured activity may apply to the Minister for enhanced remission.*
>
> *(b) An application shall be made in such form and manner and shall be accompanied by such other information and documentation as may be specified by the Minister.*
>
> *(c) An application under subparagraph (a) shall not be made earlier than 6 months prior to the date on which the prisoner would be released if enhanced remission of one third of the prisoners sentence were to be granted to him or her.*
>
> *(d) Where the Minister receives an application under subparagraph (a), the Minister shall, as soon as practicable thereafter—*
>
> > *(i) if he or she is satisfied that the prisoner, having regard to the matters referred to in subparagraph (f) is less likely to re-offend and better able to re-integrate into the community, notify the prisoner of his or her decision to grant enhanced remission to the prisoner and the period of enhanced remission of sentence which is to apply, or*
> >
> > *(ii) notify the prisoner of his or her decision to refuse the prisoners application and the reasons for the refusal.*
>
> *(e) A notification referred to in subparagraph (d) shall be in writing and shall be copied to the Governor of the prison in which the prisoner concerned is serving his or her sentence.*
>
> *(f) The Minister shall, when making a decision in respect of an application under subparagraph (a), have regard to the following matters:*

(i) the manner and extent to which the prisoner has engaged constructively in authorised structured activity;

(ii) the manner and extent to which the prisoner has taken steps to address his or her offending behaviour;

(iii) the nature and gravity of the offence to which the sentence of imprisonment being served by the prisoner relates;

(iv) the sentence of imprisonment concerned and any recommendations of the court that imposed that sentence in relation thereto;

(v) the period of the sentence served by the prisoner;

(vi) the potential threat to the safety and security of members of the public (including the victim of the offence to which the sentence of imprisonment being served by the prisoner relates) should the prisoner be released from prison;

(vii) any offence of which the prisoner was convicted before being convicted of the offence to which the sentence of imprisonment being served by him or her relates;

(viii) the conduct of the prisoner while in custody or during a period of temporary release;

(ix) any report of, or recommendation made by—

(I) the Governor of, or person for the time being performing the functions of the Governor in relation to, the prison concerned,

(II) the Garda Síochána,

(III) a probation officer, or

(IV) any other person whom the Minister considers would be of assistance in enabling him or her to make a decision on an application under subparagraph (a).

(g) In this paragraph 'enhanced remission' means such greater remission of sentence in excess of one quarter, but not exceeding one third, as may be determined by the Minister."

The present rule came into effect on the 15th August 2014. It seems to be accepted that the applicant had a pending application for enhanced remission at this time. Paragraph 5 of S.I. 385 provides that the amended Rules apply to pending applications, subject to certain modifications as set out in the S. I.

5. The amended Rule 59 (2) replaced a previous, much shorter provision in the 2007 Rules, which provided:-

"(2) The Minister may grant such greater remission of sentence in excess of one quarter, but not exceeding one third thereof where a prisoner has shown further good conduct by engaging in authorised structured activity and the Minister is satisfied that, as a result, the prisoner is less likely to re-offend and will be better able to reintegrate into the community."

6. Both under the old and the new Rule 59 (2), the starting point for any applicant for enhanced remission is that he or she has engaged in "authorised structured activities".

7. Reference is made to "authorised structured activity" in Rule 27 (2) of the Prison Rules 2007 – 2014 as follows:-

"(2) Subject to Rule 72 (Authorised structured activity), each prisoner may, while in prison, engage or participate in such structured activity as may be authorised by the Governor (in these Rules referred to as "authorised structured activity") including work, vocational training, education, or programmes intended to ensure that a prisoner, when released from prison, will be less likely to re-offend or better able to re-integrate into the community."

8. Both the old and new Rule make clear that to be entitled to enhanced remission a prisoner must satisfy two criteria. Firstly, as already referred to, he or she must engage in "*authorised structured activity*" and secondly, the Minister must be satisfied that by virtue of that engagement a prisoner is less likely to reoffend and better able to reintegrate into the community. Unlike the old process, the amended Rule is a more structured instrument. It specifies a number of matters to which the Minister "*shall*" have regard when making a decision in respect of an application for enhanced remission. If the Minister, having had regard to the matters set out in Rule 59 (2) (f), is satisfied that a prisoner is less likely to re-offend and better able to reintegrate into the community, the Minister is mandated to grant enhanced remission. In the case of a refusal to grant, the Minister must notify the prisoner of the decision to refuse and the reasons for the refusal. The parties to these proceedings agree that the granting of enhanced remission is subject to the first named respondent being satisfied that the criteria set out in the rules are met.

9. The applicant's solicitor, Ms. Almond, swore an affidavit on the applicant's behalf and with his authority and consent in support of the present application on the 20th November 2014. The following matters are, *inter alia*, deposed in the affidavit. The applicant is 48 years of age and is presently incarcerated in the Midlands Prison since 22nd February 2010 having prior to that served periods of his sentence in Cloverhill Prison and Wheatfield Prison. Since 2013 the applicant has enhanced status in the Midlands Prison. The applicant is an amputee having undergone below the knee amputation in 1988. In addition to his disability, the applicant is described as suffering from chronic health problems including significant periods of incapacity which necessitated the use of a wheelchair for a significant part of his time in custody. As a consequence the applicant has spent time at the National Rehabilitation Hospital in Dun Laoghaire.

10. The affidavit makes reference to the instruction from the applicant that when he was committed to prison on foot of the Committal Order issued by the Central Criminal Court or at any time during his sentence no information concerning the Prison Rules was communicated to him nor was he was informed what activities would qualify as "authorised structured activity". It is averred that, notwithstanding the absence of formal guidance, the applicant endeavoured to be of good conduct and to engage fully in

authorised structured activities. It is stated on the applicant's behalf that he attended school for 2 ½ years in the metal work shop in the Midlands Prison and since February 2011 worked in horticulture when his health allowed. For 10 months of the 2 ½ years he attended the metal work course, he was confined to a wheelchair but was nonetheless able to attend at the metal work classes because his cell (on A landing) was close to the school. He claims that following his transfer to a different part of the prison (G wing), he was informed by the prison authorities that he would no longer be able to attend school as there were no additional staff available to assist him getting there. Following a fall in September 2013 the applicant was confined to a wheelchair for 8 months. It is claimed that during this time he requested to attend school and undertake various courses in pottery and clay work but was informed again by the prison authorities that the school rooms were not wheelchair accessible and that there were no extra staff to assist him in accessing the school room. While the applicant has been able to walk with the aid of his prosthetic limb since May 2014 he has not been able to resume work in horticulture because he has been told he is no longer suitable to work in the gardens. A request made by him to use the library once a week was declined by the prison authorities on the grounds that there was no available staff to assist him in accessing the library. The affidavit further avers:-

> *"I say and am instructed that due to the applicant's disability and ill health he is significantly disadvantaged in his capacity to engage with activities in prison, however during his time in prison he has engaged to the best of his ability in various authorised structured activities made available to him. I am instructed that never was it suggested to the applicant by the prison authorities that he should participate in one authorised structure over another.*
>
> *I say and am instructed that the applicant has never been advised by any of the prison authorities what qualifies as "authorised structured activity". Nor has the applicant been advised what he could do by way of "authorised structured activity" or indeed what was expected of him in this regard. Notwithstanding same, as is apparent from the contents of this affidavit, the applicant has sought to make the most of his time in prison and his taken advantage of the courses available to him despite his serious disability. I am instructed that were any further guidance available to the applicant, he would gladly avail of same."*

11. On the 17th December 2012 the applicant's solicitor wrote to the second named respondent requesting his transfer to an open prison in view of his considerable disabilities and health problems. This request was declined by letter of the 19th December 2012.

12. Ms Almond states that she is instructed that the applicant wrote to the Irish Prison Service following receipt of the above mentioned correspondence requesting enhanced remission of one third, as provided for by the Prison Rules. The applicant received no written reply but was advised verbally that he did not qualify.

13. On the 24th May 2013 Ms Almond wrote to the Governor of the Midlands Prison regarding the application for one third remission and in respect of an application the applicant had made concerning the Community Return Scheme. A reply was received by email from the Governor on the 29th May 2013 advising as follows:-

> *"Please be advised that I have received a written application for one third remission and to be considered for the Community Return Scheme from Mr Ryan dated 28th May.*
>
> *In relation to the one third remission application I explained to Mr Ryan that this is only very rarely granted and that he could of course apply. His application has been sent to the Irish Prison Service Headquarters today."*

14. On the 21st August 2013, the applicant's solicitor wrote to the first named respondent, with copies of her letter sent to the second named respondent and the Governor of the Midlands Prison, advising that the applicant believed that he fitted the criteria for enhanced remission and that he has spent his time in prison productively. After alluding to the applicant's difficulties due to his disability and health problems, the letter continued:-

> *"Despite his considerable disability Mr. Ryan worked in the metal work shop in the Midlands Prison for 2 ½years, and he has been working in horticulture in the prison since February 2011. He has not been the subject of any disciplinary proceedings. Since entering prison Mr Ryan has engaged to the best of his ability in various authorised structured activities. As a result of this, he strongly believes that he is less likely to re-offend and will be better able to reintegrate into the community upon his release."*

15. On the 3rd September 2013, the Operations Directorate of the second named respondent replied as follows:-

> *"I am directed by the Minister for Justice & Equality to reply to your correspondence dated 21st August, 2013.*
>
> *Section 59 (2) of the Prison Rules, 2007 allows for the discretionary granting of additional remission – up to one third as opposed to the standard rate of one quarter – by the Minister where a prisoner has shown the following:*
>
> > *i. to have displayed good industry in prison and continues to be of good conduct*
> >
> > *ii. to display the willingness to seek employment through education/coursework whilst in prison to enhance their chances of gaining employment on release*
> >
> > *iii. through engagement in authorised structured activities and where, as a result, the prisoner is less likely to re-offend and will be better able to reintegrate into the community.*
>
> *An essential part of the criteria for rewarding one third remission is that applicants engage in offence focused work which in turn should lead to a reduced risk of re-offending.*
>
> *While you are to be commended for the industry you have shown while in custody, the fact remains that a large aspect of rehabilitation is committed and concrete engagement with the therapeutic services within t he prison in the context of offence focused work.*
>
> *The Minister considers this an essential requirement for the granting of one third remission. Any application for one third remission which does not contain evidence of offence focused work (to be supported with the proper documentation)will not be considered. I hope this clarifies the position for you regarding one third remission. You are welcome to resubmit another application at any time with the supporting documentation."*

16. At paragraph 17 of her affidavit, Ms Almond addresses the contents of the letter of the 3rd September 2013 :-

> *"... I am instructed that in early 2013 the applicant requested an appointment with the Probation and Welfare Service in the Midlands Prison. There is a suspended element to the applicant's sentence and he is aware that he must engage with the Probation and Welfare Service prior to his release. I am instructed the applicant was informed by Prison Officer Simon Nolan who works the Probation Officer in the Midlands Prison that he had requested the applicant be given an appointment and he had been told by the Probation Officer that she would be in contact with the applicant. I am instructed the applicant did not receive an appointment and continued to request one. I am instructed that in March 2014 the applicant spoke to the Probation Officer and was talking to another prisoner on the landing, that the Probation Officer told the applicant on that occasion she would see the applicant some time in May. I am instructed the applicant met the Probation Officer again in or around June 2014 and she told him she had not forgotten about him. I am instructed that the applicant was given an appointment with Probation and Welfare on the 15th September 2014; that he met with the Probation Officer on that date but has not been given a further appointment. There is no sex offenders course available to prisoners in the Midlands Prison."*

17. After what would appear to be an 11 month hiatus, the applicant's solicitor wrote again to the Irish Prison Service on the 21st and 28th July 2014 regarding his application for one third remission. The earlier letter made reference to the Prison Services letter of the 3rd September 2013 and a request was made for details of the offence focused work made available to the applicant. This request was repeated in the letter of 28th July 2014.

18. The reply dated 1st August 2014 from the Irish Prison Service was in the following terms:-

> *"I wish to thank you for your letters of 21 July and 28 July 2014 on behalf of your client.*
>
> *Rules 59(2) of the Prison Rules 2007 states the following:*
>
> *That the Minister may grant such greater remission of sentence in excess of one quarter, but not exceeding on third thereof where a prisoner has shown further good conduct by engaging in authorised structured activity and the Minister is satisfied that, as a result, the prisoner is less likely to re-offend and will be better able to reintegrate into the community.*
>
> *I can advise you that the following services/activities are available to prisoners in the Midlands Prison: Medical including methadone clinics, Psychiatric Service, Psychology Service, Probation Service, Work shops, Training and Employment, Education (full range of classes including, Anger Management Course, Stress Management, Pre-release Course), Chaplaincy, Addiction Counselling Service, A.A., Red Cross, Recreational facilities – gym, Library facilities, the Integrated Management Service – who co-ordinate and create links with Community Welfare Officers, Cuan Mhuire, Prison Links – Ballyfermot, Clondalkin, Darndale areas, Cork Alliance, Citizens Advice, Money Advice Bureau (MABS).*
>
> *It is for your client, or you on his behalf, to demonstrate to the Minister that he has engaged in authorised structured activity and as a result has reduced his risk of re-offending."*

19. By letter dated the 12th August 2014, the second named respondent wrote to the applicant's solicitor (apparently in response to a letter of the same date) advising as follows:-

> *"In your letter, you say that Mr Ryan has 'availed of all available, relevant, authorised structured activities within the limitations of his disability and ill health' yet you do not specify which services he has availed of as was requested.*
>
> *Given that your client, or you on his behalf, in order to support his application for one increased remission, have not yet outlined the services/activities with which he has engaged while serving this sentence of imprisonment, I have today written to the Governor of the Midlands Prison requesting that he contact the various services in the Midlands Prison on your client's behalf. The Operations Directorate are not in a position to make a submission to the Minister for Justice Equality outlining your client's engagement in authorised structured activity, in line with Rule 59(2) of S.I. 252 of 2007 (The Prison Rules) unless we know what such activity your client has availed of.*
>
> *I have mentioned to the Governor that Mr Ryan has sought appointments with the Probation Service in the Midlands Prison for the last 18 months but has yet to be given one. I have asked the Governor to raise this matter with the prison-based probation service. In addition I have requested your client is discussed at the multidisciplinary review meeting in the Midlands Prison on 21st August 2014. This meeting is attended by the prison management, the various prison-based service and the Operations Directorate…As soon as the Operations Directorate are informed of the structured activity that Mr Ryan has engaged in, please rest assured that we will make a submission to the Minister on his behalf."*

20. On the 22nd August 2014, the applicant's solicitors advised the second named respondent of the applicant's belief that his case was not discussed at the meeting of the 21st August 2014 and sought confirmation whether it was in fact discussed on that date and what decision, if any, was made in respect of the application for enhanced remission.

21. On the 22nd August 2014, under the title "*Re John Ryan's application for enhanced remission*", the second named respondent wrote to the applicant in the following terms:-

> *"I am directed by the Minister for Justice an Equality to refer to your application for enhanced remission of sentence, in excess of one quarter, but not exceeding one third which is pending at present.*
>
> *The purpose of this letter is to inform you that Rule 59(2) of the Prison Rules 2007 has been amended to provide you with clarification in relation to the criteria taken into consideration by the Minister when deciding an application for enhanced remission and to invite you if you wish to make further submission in support of your application. A copy of the amended Rule, containing the relevant criteria is attached for your information.*
>
> *Please note there has been no substantive change to the manner in which your application will be determined and you are not required to make any further submissions. However, as a matter of fairness you are being afforded the opportunity to make such submissions or arguments as you deem appropriate in support of your application for enhanced remission.*

Please note that the time limits sets out in Rule 59(2) (as amended) will not apply to your application. Every effort will be made to issue you with a decision as soon as possible after you submit further submissions or indicate you are satisfied for a decision to be made based on existing application and submissions."

A copy of a form to be completed by the applicant was enclosed.

22. The applicant availed of this opportunity and under cover of letter dated 8th September 2014 his solicitor furnished a duly completed application form together with a written submission outlining the education and work/training availed of by the applicant in prison and advising of "*other structured activity*" availed of by him, namely a meeting in February 2010 with a psychologist over a period of three weeks to undertake talking therapy. The submission also stated:-

"In early 2013 I requested an appointment with the Probation and Welfare Service in the Midlands Prison. I continued to request an appointment and have now been given my first appointment with the Probation Officer on 15th September 2014.

There are no offence specific structured activities available to me in The Midlands Prison. I am hopeful that once I meet with a Probation Officer I will be able to avail of any advice and guidance given to me."

23. The case made by the applicant that the activities undertaken by him made him less likely to offend and better able to integrate into the community was put in the following terms:-

"Since being in custody I have received no P19s nor had any disciplinary issues. I have enjoyed enhanced status since 2012. I had no drug or other addictions of any kind, and there have been no further charges against me. My work/training and education in prison has allowed me to maintain skills I acquired before going into custody which will enable me to remain capable of sustainable employment and it is my intention to return to the motor bike business upon my release. This will allow me to fully reintegrate into the community and not be reliant on State benefits."

24. In the accompanying letter, the solicitor reiterated that:-

"[The applicant] *has engaged to the best of his ability in various authorised structured activities made available to him, however, due to his considerable disability and serious ill health he is significantly disadvantaged in his capacity to engage with activities in prison. May we also bring to your attention your comments in previous correspondence which commended our client on his industry while in custody."*

25. The decision to refuse enhanced remission was communicated to the applicant by letter dated the 15th October 2014. It advised as follows:-

"I refer to your application seeking to be considered by the Minister for Justice and Equality for increased remission under Rule 59 of 2007 Prison Rules (as amended).

The principles governing the awarding of remission are contained within Rule 59 of Statutory Instrument No. 252 of 2007 (The Prison Rules) as amended by S.I. No. 385 of 2014. In summary, prisoners are sentenced to a term of imprisonment exceeding one month qualify for one quarter remission on the basis of good behaviour. Further, prisoners may also receive remission of greater than one quarter but not exceeding one third of their sentence if they:

i. Demonstrate good behaviour by engaging in authorised structured activity, and

ii. Satisfy the Minister that as a result of (i) they are less likely to re-offend and would be better able to re-integrate into the community.

In considering whether a prisoner's engagement in authorised structured activity is likely to lead to the prisoner to being less likely to re-offend or better able to reintegrate into the community, the Minister will take into account a number of factors including the following:

- *the manner and extent to which the prisoner has engaged constructively in authorised structured activities;*
- *the manner and extent to which the prisoner has taken steps to address his or her offending behaviour;*
- *the nature and gravity of the offence to which the sentence of imprisonment being served by the prisoner relates*
- *the sentence of imprisonment concerned and any recommendations of the court that imposed the sentence;*
- *the period of the sentence served by the prisoner;*
- *the potential threat to the safety and security of members of the public (including the victim of the offence to which the sentence of imprisonment being served by the prisoner relates);*
- *any offence of which the prisoner was convicted before being convicted of the offence to which the sentence of imprisonment being served by him or her relates;*
- *the conduct of the prisoner while in custody or during a period of temporary release;*
- *any report or recommendation made by the Governor, The Garda Siochana, Probation Officer or any other person whom the Minister would be of assistance in enabling him or her to make a decision on such an application*

The Minister having considered all of the above issues has decided to refuse your application as she is not satisfied that

as a result of your engagement in authorised structured activity, that you are less likely to re-offend or better able to reintegrate into the community. The reasons for this decision are due to the nature and gravity of the offence for which you are imprisoned (rape) and due to the manner and extent to which you have taken steps to address your offending behaviour."

On the 30th October 2014, the applicant's solicitor requested the second named respondent "to set out specifically what the Minister considers to be the manner and extent to which our client has taken steps to address his offending behaviour which has led to the Minister's refusal of enhanced remission, particularly given the circumstances of our client's disability and health issues as set out in his application"

This correspondence was not replied to.

26. A statement of opposition to this application was filed on the 19th December 2014 and a replying affidavit was sworn on the 22nd December 2014 by Dolores Courtney of the Operations Directorate of the second named respondent. A portion of Ms Courtney's affidavit is taken up with refuting the assertions made in Ms Almond's affidavit on behalf of the applicant concerning the extent to which he was hindered in his opportunities to engage in authorised structured activity. Ms Courtney rejects the assertion that prison staff were not on hand to assist the applicant in accessing his classes or the library. Moreover, issue is taken with the assertion that the applicant had not been involved in disciplinary issues while in prison. In this regard, Ms Courtney alludes to four particular breaches of prison discipline for which "P19" Reports were issued with regard to the applicant. Ms Courtney also took issue with regard to how the applicant's engagement with the Probation Service was characterised in Ms Almond's affidavit, namely his continuing to request such engagement but being ignored. Ms Courtney described this "*as simply incorrect*" and in the course of her affidavit referred to a meeting between the applicant and the Probation Service in 2011, a meeting in 2012 and 3/4 approaches by the applicant to a Probation Officer in Summer 2014 in relation to community return or applying to travel outside the country. She alludes to a further meeting on the 9th October 2014. Ms Courtney avers that in the course of the meetings which took place in 2011, 2012 and the 9th October 2014 the applicant had advised that he was not guilty of the offence in respect of which he had been convicted. The factual matters addressed by Ms Courtney in her affidavit were responded to on behalf of the applicant by Ms Almond's supplemental affidavit sworn on the 12th January 2015 wherein Ms Almond averred that the applicant continued to maintain that in April 2014 he was informed that there were not enough staff to bring him to school. Insofar as Ms Courtney, at paragraph 13 of her affidavit, had averred that the applicant was free to access the school for sex offenders located on the G3 landing in the Midlands Prison, Ms Almond's instructions were that the schoolrooms on that particular landing were for art classes and computer classes and moreover she stated the applicant's woodwork and metal work classes were in a different location entirely in the prison. While it was acknowledged that the applicant had met a Probation Officer in 2011 that was in relation to a query he had regarding social welfare. Ms Almond averred that she was instructed that the applicant did not meet with the Probation Officer in 2012 as averred to in para. 23 of Ms Courtney's affidavit but that the applicant did not have a conversation on the landing with the Probation Officer on the said occasion regarding travel abroad but that he also sought an appointment in this regard. Ms Almond averred that she was instructed that there was no meeting between the applicant and the Probation Officer on the 9th October 2014 as averred at paragraph 23 of Ms Courtney's affidavit.

27. Paragraph 7 of Ms Almond's affidavit avers:-

"Insofar as it is averred to at paragraph 15 of the Affidavit of Ms Courtney that the principal underlying reason for the refusal of extended remission was the Applicant's denial of the offence for which he is serving, it is accepted that the Applicant denies the offence of which he was convicted and for which he is serving his current sentence. I am instructed to say that the Applicant has met with the Probation Service on two occasions on the 15th September 2014 and the 9th December 2014. I am instructed to say that on these occasions the Applicant continued to deny the offence. I am instructed to say that that does not mean that the applicant will not or has not worked with the Probation Service."

28. She further states:-

"I am instructed to say that whilst it is averred to in the Affidavit of Ms Courtney that the Applicant is unable to engage with the Probation Services this is solely on the basis of the Applicant's denial of the offence and not on any other basis. I say and am I am instructed to further say that engagement with the Probation Service in offence focussed work or otherwise is not and should not be determined solely by the Applicant's denial of the offence."

Ms Almond sought to clarify certain matters in relation to the P19s received by the applicant whilst in custody.

29. A further supplemental Affidavit was sworn by Ms Courtney on the 28th January 2015. The Applicant's contention that in April 2014 he was advised by the school principal that there were not enough staff to bring him to school was denied by Ms Courtney, having checked with the school principal and, according to Ms Courtney, the other individual referred to by Ms Almond as having advised the applicant that there was not enough staff to bring him to school had no recollection of having such a conversation with the applicant. Ms Courtney also took issue with Ms Almond's averment that the classrooms on the G landings were confined to art and computers. Ms Courtney clarified her previous averment regarding the applicant having denied his offence to a Probation Officer on the 9th October 2014 by stating that "*it was at a multidisciplinary review meeting on the 9th day of October 2014 that it was stated by the Probation Service that the applicant continued to deny his offence, rather than at a meeting with the Applicant".*

30. It is clear from the above summary that certain factual issues between the parties remain unresolved, namely the extent to which the applicant was able to access authorised structured activity within the prison and the number of disciplinary matters involving the applicant. However, it is not otherwise suggested by the applicant or the respondents but that the applicant engaged in authorised structured activities within the prison. There is some dispute between the parties as to the level (and substance) of the applicant's engagement with the Probation Service. There is consensus that the applicant continues to deny his offence.

31. To revert again to the replying affidavit sworn by Ms Courtney on the 22nd December 2014.

32. At paragraph 14 thereof she avers as follows:-

"More importantly in the context of the present proceedings, the Applicant's engagement in the metalwork shop, the horticulture and the school were taken into consideration in his favour in considering his application for further remission pursuant to Rule 59(2) of the Prison Rules 2007. To the extent that it is suggested by Ms Almond, therefore, that the applicant was in some way disadvantaged by his inability to engage in some structured activities, or that the Respondents favoured one activity over another, I say that this is simply not the case. In exercising her discretion whether to grant further remission or not, the First Named Respondent does not favour one activity over another, but

makes a decision based on all the circumstances of any applicant's case whether their involvement in such activities means they are less likely to re-offend and more likely to reintegrate into society on their release as Rule 59(2)envisages…"

33. At paragraphs15 and 16 she states: -

"In the particular case of the Applicant, the principal underlying reason for the refusal of extended remission was his denial of the offence for which he is serving a sentence. As a result, he was unable to engage with the probation services in offence focused work, the purpose of which is to assist him in addressing the underlying reasons for his criminal behaviour to reduce the risk that he will reoffend on release. This is particularly important in the context of a prisoner convicted of a sexual offence for reasons which I expect I do not need to elaborate upon. Unless he faces up to his offending behaviour, there can be little confidence that he will not re-offend upon his release and certainly very little that he is less likely to commit the offence having regard to such other structured authorised activities as he may have engaged in during his period in prison.

Whilst it is correct that there is no sex offenders course available in the Midlands Prison, this is not relevant to the Applicant's situation. Usually a prisoner convicted of a sex offence is assessed by the psychology service and the ISM service for consideration as to his suitability for the sex offenders Building Better Lives programme in Arbour Hill prison. This programme requires substantial commitment from the prisoner and a lot of hard work that requires the prisoner to be motivated to rehabilitate and avoid committing similar offences upon his release. A prisoner, such as the Applicant, who denies the offence, has no prospect of achieving any benefit."

34. At paragraphs 25 and 26 she avers:-

"I further say that any application for a further remission must be made by the prisoner and that it is free to the prisoner to submit any material upon which they wish the First Named Respondent to reply in making her decision. While of course most of the material might be available to the Second Named Respondent it may not have details of all the courses engaged in by a prisoner and the prisoner might wish to emphasize or submit materials that are not so available. It was for this purpose, therefore, that I wrote to Ms Almond on the 12th day of August 2012. In that letter I did not say that the Applicant's case "would be discussed at the multidisciplinary meeting" on the 21st August, but as the letter makes clear any such application for further remission could not be considered until he had submitted details of the activities he had engaged in, and I beg to refer in this regard to a copy of the letter as exhibited at Exhibit "CA7" to the affidavit of Ms Almond.

In fact, whilst it had been intended to discuss the applicant's case at the meeting on the 21st August 2014, I did not wait for that meeting and contacted all the services and management directly. It was from those contacts that I prepared my submission to the Minister in which I recommended that the applicant not be granted extended remission. I beg to refer to a true copy of the said recommendation upon which marked "DC3" I have endorsed my name prior to the swearing hereof."

The submission to the Minister

35. The first part of the submission outlines the background to the applicant's conviction for rape and details of the sentence imposed and the conditions imposed on him post his release from prison. The second part headed "*Application*" notes that the applicant seeks increased remission on the grounds that he had engaged in authorised structured activity.

36. Part 3 entitled "*structured activities*" outlines details regarding Mr Ryan's particular disability and health problems and proceeds to outline the applicant's submissions regarding education work and training facilities afforded him in prison. Ms Courtney records as follows:-

"Education – He says that after he was moved from A landing to G landing that he was told by the prison authorities that he would not be allowed to attend the school as there was no staff available to assist him getting there. He says that recently he has requested to go to pottery classes and to use the library but has been refused this as he has been told that staff are not available to bring him to the school/library.

He says that he attended cookery classes for two weeks shortly after his transfer to Midlands Prison but did not attain any level of certification. He left the cookery classes as he got a place in the metal work classes and he attended these classes for 2 ½ years. He is not currently in the school but is on a waiting list for metalwork and woodwork classes.

Work and Training – From February 2011 he worked in the horticulture area, when his health allowed. Since May 2014 he is back using his prosthesis and has asked to work in the horticulture area but he has been refused this as prison management say he is no longer suitable as there is so much walking and lifting involved."

37. Under "*Engagement with Services*" it is noted that the applicant has no addiction issues. His engagement with the psychology service in February 2010 is alluded to together with the fact that he met with the integrated sentenced management service. With regard to the Probation Service, the following is noted:-

"In his application for additional remission, he says that he requested an appointment with the Probation Service in early 2013 and was given his first appointment with a Probation Officer on 15 September 2014.

I discussed this with the Probation Service who confirmed that Mr Ryan is subject to 5 years post release Probation Service supervision. They advise me that Mr Ryan sought to meet with the Probation Service in 2011 but that this meeting transpired to relate to a social welfare matter and he was directed to the Community Welfare Officer. During this meeting, Mr Ryan informed the Probation Service [of certain matters]. Mr Ryan also advised at the time that he was not guilty of the offence.

The Probation Service met him again in 2012 following a request by him. At this meeting he informed again that he is not guilty of the offence. He was advised [of a certain matter] He informed of his discontent with the Probation Service's involvement in this matter.

The prison based Probation Officer dealing with his case told me that over the summer months Mr Ryan approached her

on 3-4 occasions while she was passing him on the landing. Each time he enquired about applying for Community Return (in lieu of imprisonment) or applying to travel outside of the country. The Probation Officer redirected Mr Ryan to appropriate services for these matters and advised him that she would meet him in August 2014.

At the review meeting held in the Midlands Prison on the 9 October 2014, the Probation Service advised me that Mr Ryan continues to deny his offence."

38. Under "*Disciplinary Record*", reference is made to five P19 reports during his time in custody, that he was cautioned on three occasions and it was noted that the two reports were not dealt with by the Governor within the time limit allowed for disciplinary hearings.

39. The final part of Ms Courtney's submission to the Minister is headed "*Decision*" and states as follows:-

"All matters considered, Mr Ryan's application for increased remission under Section 59 of the Prison Rules 2007 is refused. Whilst it is noted that he has made efforts to engage in authorised structured activity he continues to deny his offence.

The following are the reasons for refusal of Mr Ryan's application:

a) The nature and gravity of the offence to which the sentence of imprisonment being served by the prisoner relates; and

b) The manner and extent to which the prisoner has taken steps to address his or her offending behaviour."

40. Ms Courtney's "decision" was accepted by the Minister, hence the present application. The contents of the Minister's letter of the 15th October 2014 to the applicant is already referred to herein.

41. At paragraph 5 of her affidavit, Ms Courtney makes reference to the nature of the review of a prisoner's file which is conducted by the first named respondent, in the exercise of her discretion, with the view to determining whether, as Rule 59(2) envisages, a prisoner is less likely to re-offend and will be better able to reintegrate into the community. As part of this consideration the first named respondent will consider the engagement by the prisoner in any authorised structured activities and the "*effect of such engagement on the prisoner in order to determine the central issues of his likelihood to reoffend or reintegrate into the community*." Ms Courtney goes on to state that the mere fact that a prisoner has engaged in authorised structured activities "*is not of itself determinative of any such decision and/or much less entitles the prisoner to any period of remission but is a factor to be considered by the First Named Respondent."*

42. She addresses the purpose of authorised structured activity as follows:-

"While in general terms the intended purpose of authorised structured activities is to ensure that a prisoner is less likely to reoffend and reintegrate into the community on release, the success in any particular case of that endeavour will depend on the prisoner engaged in the activity and the nexus between that activity and their offending behaviour. The assessment of whether the engagement has had the desired affect on any particular prisoner is one which the First Named Respondent must undertake and which requires a careful analysis of the prisoner's circumstances and other information regarding their conduct and character and not only a consideration of the fact that they have completed the activity. It is the experience of the Second Named Respondent that certain structured activities will have a greater degree of success in terms of its objectives where the specific activity is one that addresses the particular offending behaviour of the prisoner in question."

The arguments advanced before the court

43. The applicant challenges the decision of the first named respondent (and the decision- making process) on the basis that it was unjust and arbitrary.

44. The applicant contends that it was unjust because of the lack of information provided to him in the course of the consideration of his application for enhanced remission. There was, it is submitted, an absence of guidance for the applicant. While there was reference to the requirement for him to engage in authorised structured activities and its subset offence focused work, neither of these concepts was explained or defined for the applicant. It is argued that unless the applicant was told what offence focused work or courses were available for him to engage in how was it to be expected that he could avail of such work. The second named respondent's letter of 1st August 2014 did not make it clear which of the listed activities were "*authorised structured activities*" much less the "*offence focused work*" which they required in order for the applicant's application for enhanced remission to be given consideration. for The respondents reject this argument as without merit and point to the information provided to the applicant and his solicitors of correspondence and to the guidance contained in the Prison Rules themselves

45. The applicant maintains that the arbitrariness which attaches to the decision is inherent in the generic or blanket based approach which was adopted with regard to the application. It was not one which focused on the applicant's particular circumstances. Because he had not engaged in offence focused work his application was effectively not considered as he could not demonstrate, in the absence of offence focused work, that he was less likely to offend once released. Thus, the effect of this blanket approach by the respondents is that an application by any prisoner who does not accept his guilt for enhanced remission will not be considered. Counsel points to the mindset of the second named respondent evident from the commencement of the application, from the Governor's assertion in his letter dated 29th May 2013 that applications for enhanced remission are only rarely granted to the contents of the letter of 3rd September 2013 which effectively foreclosed on any prospect of the applicant obtaining enhanced remission. In particular, the court was referred to the concluding paragraph of the first named respondent's letter of refusal as evidence of the arbitrary nature of the decision to refuse, in circumstances where the applicant had engaged in authorised structured activities and where no regard was paid to the fact that he has not been able to engage in offence related work as he maintains he is not guilty of the offence. It is submitted that the respondents have used the criteria in the Rules to say that unless a prisoner has engaged in offence focused work he or she cannot be regarded as less likely to reoffend. Counsel submits that this does not follow as a matter of logic.

46. Counsel contends that this arbitrary blanket approach raises two important questions for consideration by this court. Firstly, for a prisoner like the applicant who does not accept his offence, in the absence of the theoretical possibility of being granted enhanced

remission, where is the incentive for such a prisoner to engage in authorised structured activity (where it is not offence focused work)?

47. The second, more telling, issue raised by the blanket approach adopted in this case calls into question the applicant's engagement with the Probation Services once released where, again, the focus will be on the applicant accepting his offence. It is argued that since the applicant is not accepting of his guilt, it is but a short step to say that he will be unable to comply with the suspended element of his sentence. The suspended element may therefore be rendered meaningless i.e. where the applicant does not accept his guilt he cannot then avail of suspension of sentence. This, the applicant submits, is a worrying aspect of the approach adopted by the respondents in this case.

48. With regard to the principal contention put forward in these proceedings, namely the arbitrary nature of the decision making process adopted by the first named respondent, counsel referred the court to a decision of the English Court of Appeal *in R. v. Home Secretary (ex parte Lillycrop)* [1996] EWHC Admin 281 where Butterfield J. summarised the principles which must guide the UK parole board when faced with a prisoner who seeks parole but who denies his guilt. The applicant submits that notwithstanding that fact that the case concerned the issue of parole, the reasoning therein is equally applicable to the question of remission of sentence.

49. Addressing the issue of an application for parole by a prisoner who denies his guilt, Butterfield J. stated:-

> *"We consider that the Parole Board must approach its consideration of any application for parole on the basis that the applicant has committed the offences of which he has been convicted. It is not the function of the Parole Board to investigate possible miscarriages of justice or to give effect in their considerations to any personal misgivings they may have about the correctness of any particular conviction.*
>
> *That being so, where the pattern of offending behaviour is such that there is a significant risk of a further offence being committed, particularly an offence of a violent or sexual nature, and an applicant has not demonstrated by his conduct in prison that such risk has been reduced to an acceptable level, then a recommendation for parole is unlikely to made. Part of that conduct in prison to which a panel of the Parole Board will inevitably and rightly look will be the extent to which an applicant has examined the behaviour which has lead to his imprisonment. Where because of denial that the offence has been committed no such examination has taken place it will be more difficult for an applicant to satisfy the Board that the risk he posed when he was sentenced to a term of imprisonment has been reduced to an acceptable level. We repeat and emphasize that each case must turn on its own particular facts.*
>
> *Statistically there will always be a risk of a further offence being committed at a time when the prisoner would otherwise be in prison. The task of the Parole Board is to assess the extent of the risk and to determine in the light of that assessment whether the risk is small enough to contemplate early release. It should be noted that the Directions....place emphasis on the violent or sexual offender and in particular the fact that the risk of further violent or sexual offending is more serious than other types of offending...*
>
> *For the reasons set out in Zulfikar (No 1) with which we respectfully agree it is an impermissible approach for the Parole Board to say in respect of an applicant: '[t]his man denies his guilt; therefore, without considering the circumstances further, we will not recommend parole.' However a denial of guilt coupled with an unwillingness to address offending behaviour is a factor to which the Board must have regard in assessing the risk to the public of further offending. It will be for the Parole Board to determine the extent to which, if at all, this factor should influence their determination."*

Counsel emphasises that it has not being suggested that the prison authorities here, no more than the UK parole board, ought to look behind a conviction. Nor is issue taken with the sentiments expressed in the second quoted paragraph above and he agrees that a denial of guilt is a relevant factor which must be weighed and assessed by a decision maker in order to establish whether an application for parole, or as is the case at hand, enhanced remission should be granted. Counsel also agrees that a denial of guilt, coupled with an unwillingness to address offending behaviour, is a factor to which the first named respondent must have regard and he agrees that it is for the first named respondent to determine the extent to which this factor should influence her determination. Indeed, counsel acknowledges that these factors could in certain circumstances weigh against a grant of enhanced remission. However, counsel maintains that the approach adopted by the first named respondent was, in effect, the "*impermissible approach*" referred to in *Lillycrop*, namely that when faced with the applicant's denial of his guilt (and his consequent non engagement in offence related work), the first named respondent made her decision without addressing his circumstances further, which amounted, in effect, to a failure to consider his application for enhanced remission. The court was referred to a decision of the English Court of Appeal in *R. (Oyston) v. The Parole Board* [2000] EWCA Crim 3552 where the *Lillycrop* approach was approved, and where it was stated by Bingham L.J, *inter alia*, "*In almost any case the Board would be quite wrong to treat the prisoner's denial as irrelevant, but also quite wrong to treat a prisoner's denial as necessarily conclusive against the grant of parole."*

50. Counsel submits that that is what occurred in the present case; the applicant's denial of his guilt meant no offence focused work could be engaged upon, therefore in the absence of offence related work, his application for enhanced remission was not be considered. That, counsel says, is the arbitrary nature of the process which was engaged in the present case. It is argued that this arbitrariness permeated the process and in this regard counsel points to Ms Courtney's letter of the 3rd September 2013 where her mindset is on the requirement of offence focused work. This is where the decision in the case falls foul of the dicta in *Lillycrop* and *Oyston*. It is not the actual decision of the Minister that is in issue, it is the process by which that decision was arrived at, the entire of which was dominated by Ms Courtney's mindset. It is argued that the decision to refuse enhanced remission was made by Ms Courtney, evident from the manner in which the submission which went to the first named respondent was formulated. Ms Courtney did not simply recommend refusal as she avers to in her affidavit.

51. The respondents deny that such a limited approach was adopted with regard to the application and in this regard point to the consideration which the application was afforded, as evidenced by the submission furnished by Ms Courtney to the first named respondent on the 15th October 2014. The focus was in accordance with the approach advocated by the English Court of Appeal in *Lillycrop*. In particular, they argue that consideration was given by the first named respondent to the structured activities undertaken by the applicant and his engagement with services, again evidenced by the contents of Ms Courtney's submission.

52. The respondents submit that, in effect, what the applicant contends for in this case is for a provision of a different consideration under Rule 59(2) for prisoners who deny their offence.

53. With regard to the two questions posited by the applicant's counsel, the respondents argue that these questions have no relevance to the issue to be decided in this case but in any event the respondents contend there are many incentives for a prisoner to engage in authorised structured activities and that such participation is not confined to seeking enhanced remission. Other benefits

are the opportunity to obtain enhanced status in the prison, to be moved to a semi open prison and to avail of, for example, community release. With regard to the second question, the respondents contend that the applicant's ability to avail of his suspended sentence will depend on the conditions of his suspended sentence and that this is not a matter which has any relevance to the present case.

Discussion and conclusion

54. The central question for determination in these proceedings is whether the application for enhanced remission received due consideration pursuant to the provisions of Rule 59(2) of the Prison Rules (as amended) and in accordance with the principles of fairness. In *Ryan v. Minister for Justice* 2014 IEHC 513 O'Malley J. stated: *"a prisoner who seeks extended remission is entitled to have his or her application considered in a fair and rational manner*." The decision, and the process by which it is arrived at, must not be unjust and must be free from arbitrariness and capriciousness. In the course of these proceedings I was referred to the decision in *McKevitt v. Minister for Justice* [2014] IEHC 551 where Kelly J., in his consideration of Rule 59(2) of the 2007 Prison Rules, addressed the circumstances in which the courts will intervene with the exercise of powers vested in the executive. The learned Judge had this to say:-

> *"61. The approach of the courts to the exercise of this ministerial power is dealt with in the judgment of Hardiman J. speaking for the Supreme Court in Kinahan v. Minister for Justice [2001] 4 I.R. 454. In that case, the applicant sought to quash a decision to refuse him temporary release in circumstances where he contended that the decision did not contain adequate reasons and such reasons as were given suggested that the decision was irrational."*
>
> *62. In the course of his judgment, Hardiman J. referred to the judgment of Finlay C.J. in Murray v. Ireland [1991] ILRM 465, where that judge said:-*
>
> *"The exercise of these powers of the executive is of course subject to supervision by the courts which will intervene only if it can be established that they are being exercised in a manner which is in breach of the constitutional obligation of the executive not to exercise them in a capricious, arbitrary or unjust way.*

It *is not, however, in my view, permissible for the court to intervene merely on the grounds that it would … have reached a different conclusion on the appropriateness … of temporary release*."

63.Hardiman J. went on to say of that dictum:-

> *"In my view, this decision properly emphasises the importance of the constitutional separation of powers in dealing with the implementation by the executive of a judicially imposed sentence of imprisonment. It also correctly identifies the sole circumstances in which the court would be justified in interfering with a decision in relation to temporary release."*

I do not believe that the approach of the court should be any different when asked to interfere with a decision concerning the refusal of remission."

55. It is light of the above jurisprudence that I turn to the issues raised in this case: whether the decision was that of the Minister and if it was made by the Minister, whether proper consideration was afforded to the application for enhanced remission.

Firstly, was the decision made by the first named respondent? I am satisfied that it was. It is the case that the submission prepared by Ms Courtney contains the word "*Decision*" However, I am not persuaded by the argument that the manner in which Ms. Courtney's submission was formulated is a sufficient indicator that the decision was not taken by the Minister. The letter of 15th October 2014 to the applicant communicating the decision states that the Minister considered the application and to my mind that factual statement has not been displaced. In so concluding, I have had regard to Ms Courtney's testimony that she "*prepared* [her] *submission to* (emphasis added) *the Minister in which* [she] *recommended that the Applicant not be granted extended remission*."

Was the application afforded due consideration? While the applicant's counsel placed emphasis on the contents of the Governor's email of 29th May 2013 as evidence of a certain mindset adopted by the respondents, I do not see that communication as a sufficient indicator of the argument advanced on this issue. Notwithstanding the content of the email, the application for enhanced remission was duly forwarded to the appropriate authorities on the said date.

56. A more formal application was submitted on his behalf on the 21st August 2013, as is evidenced by the correspondence quoted herein. It is the case that this application was met with an unambiguous response, namely that it would not be considered, given the absence of any evidence of offence focused work engaged in by the applicant. Whilst the door was firmly shut on the applicant at that point, it would appear to have opened again a year later, consequent on the communications sent by Ms. Almond in July 2014 and the correspondence that passed between her and Ms. Courtney in the period 1st and 22nd August 2014. For all intents and purposes, at the time of the introduction of the new Rule 59(2), an application for enhanced remission was pending, which was duly augmented by the submissions made by the applicant on the 8th September 2014. The correspondence which passed between the applicant and/or his solicitor and the second named respondent throughout 2013 and 2014 highlighted his personal circumstances, and the case he was making for enhanced remission was clearly set out in his September 2014 submission.

57. To a considerable extent, the considerations set out in Ms Courtney's submission to the Minister of 15th October 2014 correspond to the case made by the applicant for enhanced remission, save of course that Ms Courtney's analysis also contains information gleaned from other sources, including the prison services with which the applicant had contact between 2011 and 2014.

58. An issue for determination is whether the requirement for offence focused work, which counsel for the applicant contends is the nub or crux of this case, can be said to have been the sole focus of the first named respondent's consideration of the application for enhanced remission over and above the applicant's personal circumstances. I do not find that to be the case. As is evident from the submission put before the first named respondent, what was available to her for consideration was the information the applicant himself had furnished in aid of his application for enhanced remission, together with the input from other services, as provided for by Rule 59(2) (f) (ix). To my mind, the first named respondent was entitled and indeed obliged to undertake a subjective examination of the factual information before her in order to satisfy herself in the proper exercise of her discretion that the applicant had met the criteria for enhanced remission set out in Rule 59(2) (d). In order to be so satisfied, the first named respondent was required to have regard to the matters set out in Rule 59(2) (f). As set out in the letter of refusal, the first named respondent, having considered the matters referred to in Rule 59(2) (f), was not satisfied that as a result of the applicant's engagement in authorised structured activity he was less likely to re-offend or better able to reintegrate in to the community. The stated reasons for the decision were the nature and gravity of the offence for which he was imprisoned and the manner and extent to which he had taken steps to address the

offending behaviour. The stated reasons are directly referable to Rule 59(2) (f) (ii) and (iii).

59. I am satisfied that there was sufficient factual information before the first named respondent for her to subjectively assess, as she was required to do in order to be satisfied whether or not the applicant was less likely to re-offend and better able to reintegrate into the community. I adopt the approach taken by Kelly J in McKevitt where he states:

> *"In my view, in the present case, the Minister had to satisfy herself that the applicant engaged in the authorised structured activity and that as a result he was less likely to re-offend and would be better able to reintegrate into the community. In making her decision in that regard, the Minister was not confined to a consideration merely of the courses completed by the applicant. She was also entitled to consider whether the object sought to be achieved by participation in them had, in fact, been achieved. In that regard, I am of opinion that the Minister was entitled to take into account all of the information which was put before her in the submission which led to her decision. All of that material appears to me to have a relevance in informing the Minister on the likelihood of the applicant re-offending or being better able to reintegrate into the community. They are crucial considerations for the Minister in exercising this important power."*

With regard to the jurisprudence relied on by counsel for the applicant in this case, allowing for the fact that remission of sentence cannot be equated with the grant of parole, I accept the general principle set out in the cases cited by counsel that it would be "*an impermissible approach*" for a decision maker to deny consideration of an application for remission simply on the basis that the applicant denies his or her guilt. But I am not convinced that the applicant has established that that is what occurred in the present case. Whatever about the frailties that may have attached to the earlier part of the process commenced by the applicant, it is the case that he was afforded an opportunity to make his application for enhanced remission and I am satisfied that his application was duly considered. The review of the application could not in any sense be regarded as a blanket approach; it was addressed specifically to the applicant's personal circumstances. His structured activities were considered (including particulars of the difficulties he claimed he encountered) and his engagement with the prison services was considered, as was the nature and gravity of the offence. The applicant's denial of his guilt was also a factor for consideration. The weight to be attached to the matters set out in Rule 59 (2) (f) is a matter for the Minister as the decision maker, having regard to the particular circumstances of the case. Having said that, it would be, to use the phraseology in *Lillycrop*, "*impermissible*" for a decision maker to solely weigh the manner or extent to which a prisoner has taken steps to address his or her offending behaviour or on the nature or gravity of the offence being served by a prisoner in the consideration of an application. I do not find anything to persuade me that such occurred in the present case. The case made by the applicant was considered in conjunction with the mandatory matters specified in Rule 59(2) (f). In my view, the decision arrived at does not offend against the principle of rationality. I find no evidence of arbitrariness or of an unjust approach. Furthermore, there was no fettering of the first named respondent's discretion.

60. Insofar as the applicant argues that as someone who denies their guilt he falls into a particular category of prisoner and thereby deserving of a different approach, I do not find merit in this particular argument. The Rules provide the criteria for the granting of enhanced remission. They do not provide for the special consideration as contended for by the applicant.

61. With regard to the two questions posited by the applicant, I take the view that neither is of relevance to the matters at issue in this case. In particular, it is not for this court to speculate on the nature of the applicant's engagement with the Probation Services following his release.

62. In all the circumstances, I do not find that substantial grounds have been made out to quash the decision to refuse enhanced remission. The relief sought is denied.