

Neutral Citation No.

Ref: **GIL7239**

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered:

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND
QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

**IN THE MATTER OF AN APPLICATION BY CONOR McMANUS
FOR JUDICIAL REVIEW**

GILLEN J

Introduction

[1] The applicant was granted leave to judicially review what he alleges was the denial of access to his solicitor prior to an adjudication conducted by the Governor at HMP Maghaberry ("the Respondent") on 18 January 2008 and the denial of access to his solicitor whilst in cellular confinement on the same date.

Background

[2] The applicant was a prisoner at HMP Maghaberry at the time these proceedings were lodged although he has now been released from custody. He was serving a sentence of 2 years imprisonment for offences of burglary, taking and driving away and related offences.

[3] On 14 December 2007 an article was found in the applicant's cell, namely a home made smoking implement. The applicant had not been in his cell at the time of the discovery, his cell door was open and had been open for a period of time with other prisoners moving freely around the landing.

[4] The applicant was charged with an offence contrary to prison discipline. The adjudication was originally convened on 17 December 2007 and was adjourned for the specific purpose of permitting the applicant to obtain legal advice.

[5] The adjudication resumed on 8 January 2008 when the applicant again asserted that he had been unable to obtain legal advice and the matter was once again adjourned.

[6] The applicant did hold a legal consultation with his solicitor on 14 January 2008. It is the applicant's case that on that date he did not have copies of his charge sheet or of the statements relevant to his case. Correspondence was sent by Madden and Finucane, the solicitors on his behalf, on 14 January 2008 to the governor of the prison advising that the applicant did not have his papers during the consultation and that consequently a proper opportunity to consult with the applicant had not occurred. Copies of the papers were sought. The correspondence also raised concerns about the nature of the investigation conducted by the respondent in view of the applicant's contention that he knew nothing about the article found in his cell and the accessibility of his cell to other prisoners. A request was made to adjourn the adjudication pending a substantive response which, in the event of it being refused, would be the subject of High Court proceedings.

[7] The applicant again consulted with his solicitor on 17 January 2008 when he was provided with a copy of the correspondence. It is the applicant's case that he was advised by his solicitor that when the adjudication was reconvened he should hand the correspondence to the adjudicating governor and contact his solicitor by telephone.

[8] The applicant contends that on 18 January 2008 he was advised that he was being brought to the Special Segregation Unit for an adjudication. It is his assertion that he asked permission to telephone his legal representatives and was to wait in his cell. He further contends that although he remained in his cell for a period he was eventually brought to the Special Segregation Unit without having been given an opportunity to telephone his solicitor.

[9] The applicant states that he brought his solicitor's letter to the governor's attention at the adjudication but that nonetheless the governor proceeded with the adjudication, found him guilty and sentenced him to 3 days cellular confinement.

[10] The applicant completed his 3 days cellular confinement and upon completion he contacted his solicitors. A full legal consultation occurred on 23 January 2008 following which proceedings were taken on his behalf.

[11] When proceedings were brought before this court for the purposes of obtaining leave to issue judicial review proceedings, the respondent conceded the findings of the adjudication should be remitted because of the failure of the Respondent reply to the letter of 14 January 2008 and the

decision of the adjudicating governor to proceed with the hearing without having addressed the correspondence.

[12] This court, notwithstanding that concession, granted leave to proceed on the discrete issues now before the court relating to the alleged denial of access to legal advice.

Principles governing this application

[13] The notion that a person should be deprived of his civil rights for the duration of his imprisonment is not reflected in the common law: see R v. Secretary of State for the Home Department, ex parte Simms [2000] 2 AC 115, 120.

[14] If a prisoner is to be deprived of civil rights other than those inherent in the fact of his being deprived of his liberty, that had to be done by, or with the clear authority of Parliament: see R (Daly) v. Secretary of State for the Home Department [2001] 2 AC 532; R v. Lord Chancellor, ex parte Witham [1998] QB 575, 581, Leech v. Secretary of State for Scotland [1991] SLT 910 and Potter v. Scottish Ministers, The Times Law Report 4 April 2007.

[15] Civil rights however are not engaged by adjudications concerning alleged offences against prison discipline: Re McMillan's application (2002) NI 175. On the basis of this authority I reject the submission by Ms Quinlevan, who appeared on behalf of the applicant, that Article 6 of the European Convention on Human Rights and Fundamental Freedoms ("the Convention") can be invoked in this case.

[16] On the other hand the common law rules of fairness or natural justice do apply in prison cases. I consider that an individual prisoner has a legitimate expectation of fair treatment in circumstances where, for example, a prison governor is making an adjudication. Such a decision maker is under a general common law duty to act fairly. This would include affording a prisoner a reasonable opportunity to make contact with his solicitor before an adjudication. Prison adjudications are intended to deal with disciplinary charges in a speedy and reasonably informal manner consistent with the overall requirement for fairness to all concerned. This must include the right to make contact with a solicitor in appropriate circumstances.

Conclusion

[17] I have come to the conclusion that on the facts of this particular case the application must be dismissed for the following reasons.

[18] First, I do not believe that the applicant has established on the balance of probabilities that he did request a solicitor on 18 January 2008 immediately

prior to the adjudication. I have been furnished with a transcript of the adjudication hearing of 18 January 2008. The following extract from that transcript deals with the opening comments at the hearing:

Gov Glendinning	What is your full name please?
Prs McManus	Conor McManus.
Gov Glendinning	Have you read Information Sheet 21?
Prs McManus	Yes.
Gov Glendinning	Do you understand it?
Prs McManus	Yes Governor.
Gov Glendinning	You are charged what ton Friday 14 December 07 at quarter past three in Bann 3 Cell 2 you had in your possession a home made smoking implement. Do you understand the Charge?
Prs McManus	Yes Governor.
Gov Glendinning	Do you understand the Charge Sheet?
Prs McManus	Yes Governor.
Gov Glendinning	Have you had time to prepare an answer to the Charge?
Prs McManus	Well,
Gov Glendinning	It is at least two hours since you were handed your Charge Sheet. Okay. Do you wish to apply for legal consultation?
Prs McManus	Yes.
Gov Glendinning	Well, I notice here that you have already been granted time to speak to your solicitor. And that was actually on 17 December which is a month ago. So?
Prs McManus	Yes it was granted, but did you not get a fax through?
Gov Glendinning	I did. Yes, there is a fax there. Let me see that fax again. That faxed was dated the 8 January which is 20 days ago.
Prs McManus	No, this is another fax that was sent. There is a copy of it.
Gov Glendinning	(Reads a letter). Okay.
Prs McManus	
Gov Glendinning	Okay. I have read your solicitor's correspondence there and I am going to proceed with the adjudication anyway, because you have had more than enough time to work out what you are going to tell me here today. So I am refusing you any further time to consult, because you have had a month.

[19] This was an applicant who had already spoken to his solicitor on at least two previous occasions and had with him the letter of 14 January 2008. I have no doubt that he would not have hesitated to have brought to the

attention of the governor his concern that he had been denied access to his solicitor by way of telephone on 18 January 2008 had that been the case. I can conceive of no reason whatsoever why he would not have drawn that to the attention of the governor had he been refused such access such a short time before. No explanation has been forthcoming from the applicant. This is a silence that cannot be repaired. It is deeply implausible to suggest that this particular prisoner who had been assiduous in seeking previous adjournments would have overlooked bringing this matter before the governor at the first opportunity. I believe that he was content to act on the advice of his solicitor which he had already been given without requiring further consultation. I therefore accept the assertion of Governor Glendinning in paragraph 5 of his affidavit as follows:

“5. At paragraph 10 of his affidavit the applicant avers that he was refused access to the telephone on 18 January 2008 when he was told he was being brought to an adjudication. I was not on the residential wing when the applicant was told that he was being brought to an adjudication. However he made no reference to refusal of telephone access when he arrived at the adjudication. Nor did he complain that he was unable to get legal advice. During the adjudication he explained that he had been given advice to seek an adjournment of the hearing.”

[20] Further strength is added to my doubts about the veracity of his case by virtue of the fact that subsequent to the award of the period of cellular confinement, he was provided with a signed a document headed “prisoner routine for cellular confinement”. At paragraph 8 of that document it records:

“8. If you need to make contact with a solicitor you should:

- (a) Give the telephone number of the solicitor to staff who will contact him on your behalf to make arrangements for a visit.
- (b) If you wish to write to the solicitor or family you will be provided with a letter sheet and pen.”

[21] I am satisfied that not only did he sign this form but that he was well aware of its contents. In the event he did not attempt to make contact with the solicitor during this period. Why would he have failed to do this if he had a genuine complaint that he had been so recently denied access to advice ?

[22] I accept the submission of Mr McGleenan, who appeared on behalf of the respondent, that the applicant's case is further undermined by the fact that records reveal that between 14 December 2007 and 18 January 2008, he made 115 telephone calls. None of these calls was made to the number he had identified for his solicitor. As appears from the transcript, this man had already been afforded adjournments to speak to his solicitor namely on 17 December 2007 and again on Tuesday 8 January 2008. I am satisfied that he was prepared to go into the hearing on 18 January 2008 armed with a solicitor's letter of 14 January 2008 and it is that upon which he relied at that hearing.

[23] Miss Quinlivan relied on the fact that the respondents had not directly rebutted the applicant's assertion of his request to contact his solicitor on 18 January 2007 by way of affidavit evidence. That omission in the respondent's case does not in my view carry sufficient strength to outweigh the failure of the applicant to raise this matter with the governor had his current assertion been the truth.

[24] In all the circumstances therefore I do not believe the applicant's case and I therefore dismiss it.