

**THE HIGH COURT  
JUDICIAL REVIEW**

[2022] IEHC 672  
[2021 797 JR]

**BETWEEN**

**MICHAEL MURRAY**

**APPLICANT**

**AND**

**GOVERNOR OF MIDLANDS PRISON**

**RESPONDENT**

**AND**

**THE IRISH PRISON SERVICE, THE MINISTER FOR JUSTICE AND EQUALITY**

**IRELAND**

**NOTICE PARTY**

**JUDGMENT of Mr. Justice Charles Meenan delivered on the 30<sup>th</sup> day of November,**

**2022**

**Background**

1. The factual background of this application is not in dispute. While serving a sentence in the Midlands Prison, on 5 July 2021, the applicant was convicted by a jury before the Circuit Court for other offences. The applicant was remanded in custody and produced before the Circuit Court for sentencing on 29 July 2021. During the course of the sentence hearing the

applicant threw a bible at the sentencing judge. He was removed from the courtroom and participated in the remainder of the sentence hearing via video link.

2. Arising out of this incident, the applicant was the subject of a disciplinary hearing, and the respondent imposed a sanction including loss of prison privileges for forty days. The applicant petitioned under s. 14 of the Prisons Act 2007 (as amended) (the Act of 2007) concerning the sanction. The decision of the respondent was affirmed.

### **Application for judicial review**

3. By order of the High Court (Twomey J.) of 1 September 2021, the applicant was granted leave to seek the following reliefs by way of judicial review:

- (i) An order of *certiorari* to quash the decision and sanction of the respondent to discipline the applicant before behaviour in court while a court was sitting.
- (ii) An order of *certiorari* to quash the decision of the Operations Directorate of the Irish Prison Service to affirm the decision and sanction of the respondent.
- (iii) A declaration that the discipline of a prisoner for conduct while in the custody of the court is not something that is provided for by the Prison Rules 2007 or the Prisons Act 2007.

### **Submissions of the parties**

4. The applicant submitted that the respondent did not have jurisdiction to sanction or discipline the applicant in circumstances where the applicant was not in the lawful custody of the respondent at the time when he threw a bible at the Circuit Court judge.

5. The applicant submits that at the relevant time he was not a “prisoner” or in “lawful custody” for the purposes of the Act of 2007 or the Prison Rules 2007 (“the Rules”) but was in the lawful custody of the court. Therefore, the applicant submits that he was subject to the discretion of the Circuit Court judge in respect of any sanctions to be applied for his behaviour.

The actions of the applicant amounted to contempt in the face of the court, not a breach of the Act of 2007 or the Rules.

6. The applicant relied upon s. 40 of the Act of 2007 which provides:

“(1) A prisoner who—

(a) is absent from a prison pursuant to an order under section 39 or another enactment or an order of a court, or

(b) is being brought to or from a prison or court,

may be placed in the custody of a prison officer, a prisoner custody officer or a member of the Garda Síochána.

(2) A prisoner in such custody is deemed to be in lawful custody.”

The applicant submitted that in light of the foregoing provisions he was not, at the relevant time, in “lawful custody”.

7. The respondent relies upon certain provisions of the Act of 2007 and the Rules. Section 2 defines “prisoner” as follows:

“‘prisoner’ means a person who is ordered by a court to be detained in a prison and includes a prisoner who is in lawful custody outside a prison.”

Section 35 provides:

“(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) ...

(b) ...

(c) ...

(d) ...

(e) the acts which constitute breaches of prison discipline committed by prisoners while inside a prison or outside it in the custody of a prison officer or prisoner custody officer, ...”

8. The respondent also relied upon provisions of the Rules. Rule 66 provides:

“(1) An act or omission described in Schedule 1 of these Rules shall for the purposes of Part 3 of the Prisons Act, 2007, be a breach of prison discipline and ‘a breach of prison discipline’ shall be construed accordingly.”

Schedule 1 provides:

“A prisoner shall be guilty of a breach of prison discipline if he or she -

...

(8) assaults any person,

...”

The respondent further submits the fact that the applicant’s behaviour could have been dealt with by the Circuit Court judge as a contempt in the face of the court does not remove the jurisdiction of the respondent to deal with the matter under the Act of 2007 or the Rules.

### **Consideration of submissions**

9. I am satisfied that at the relevant time the applicant was in lawful custody outside a prison and thus came within the definition of “prisoner” in the Act of 2007. The provisions of s. 40 are not exhaustive of the circumstances in which a prisoner is in lawful custody. Even though the applicant was not absent from prison under s. 39 of the Act of 2007 or being brought to or from a prison or court, he was still in lawful custody when he threw a bible at the Circuit Court judge.

10. The Rules passed pursuant to s. 35 of the Act of 2007 apply to the applicant as set out in the provisions of s. 35 (2) (e) above, which make this clear. Therefore, applying the Rules,

the respondent was lawfully entitled to discipline the applicant and he was liable to the sanction imposed.

11. Even though the applicant was liable for sanction for being in contempt of court, this did not preclude the application of the provisions of the Act of 2007 or the Rules to him.

### **Conclusion**

12. By reason of the foregoing, I am satisfied the applicant is not entitled to the reliefs sought and I dismiss his application. On the issue of costs, my provisional view is that as the respondent has been entirely successful in defending this application he is entitled to an order for costs (to include reserved costs) to be adjudicated in default of agreement. Should the applicant wish to dispute this, he may file written submissions (no longer than 1500 words) on or before the 14<sup>th</sup> day of December. I will list this matter for final orders on the 19<sup>th</sup> day of December 2022.