



**THE HIGH COURT**

**[2024] IEHC 746**

**2022 4507 P**

**BETWEEN**

**THE BOARD OF MANAGEMENT OF WILSON'S HOSPITAL SCHOOL**

**PLAINTIFF**

**AND**

**ENOCH BURKE**

**(NO. 1)**

**DEFENDANT**

**RULING of Mr Justice Nolan delivered on the 20<sup>th</sup> day of December, 2024**

**Introduction**

1. This matter is before the court to review whether the Defendant should remain in jail for his continued refusal to abide by court orders. It has been before the High Court on more occasions than any other case involving a litigant in personal. To date, there have been 41 court orders made including cost orders against the Defendant. That does not include any orders of the Court of Appeal.

2. As of the date of this ruling, no payment of any description has been made by the Defendant in relation to the fines imposed by the court or court cost orders. While access to the courts is a constitutional right, the abusive manner in which the Defendant has refused to

abide by the lawful orders of court is a very grave matter and is something which I can take into consideration in exercising my discretion.

3. It is abundantly clear that the Defendant still refuses to purge his contempt. I have asked him on many occasions to do so in the nicest possible way, but he simply refuses to engage.

### **The Use of Public Funds.**

4. The power to impose coercive measures in order to secure compliance with court orders is an essential one. It ensures, for the benefit of all of us, that the rule of law is effective. While such orders are for the benefit of society as a whole, society also has an interest in the proper use of scarce public resources.

5. When these proceedings began, the Defendant was on paid administrative leave. That remains the case. The case against the Plaintiff's disciplinary procedure is now before the Court of Appeal and its decision is awaited.

6. In the meantime, he remains on full pay and even after two years, is refusing to purge his contempt. As noted by O'Moore J., the taxpayers are burdened with paying his salary while at the same time paying for his upkeep in Mountjoy Prison (*The Board of Management of Wilson's Hospital School v Enoch Burke* [2022] IEHC 719). The cost of a prisoner in jail is now €84,067 annually. That is €1,600 a week.

7. On the 16<sup>th</sup> of March 2023, O'Moore J. made an order that he pay a fine of €700 per day or every part of the day that passes until he purged himself and fixed the amount of €23,800 in respect of fines up to the 1<sup>st</sup> of March 2023 (*The Board of Management of Wilson's Hospital School v Enoch Burke* [2023] IEHC 144).

8. That order was until the plenary hearing of the case before Owens J. in May 2023. By my calculation, the Defendant now owes on foot of that fine the sum of €193,800 to the State.

9. It seems from submissions made to Sanfey J. in June of 2024, it would seem that there is no easy mechanism to enforce that fine.

10. This double draw on the public finances, in the very peculiar circumstances of this case, is a factor supporting his release at this time, particularly during the Christmas period, where there are scarce resources to deal with people who should be in jail due to the crimes of which they have been convicted. That should not include the Defendant. He is in jail because he chooses to be in jail.

11. In all of his court appearances, of which there have been many, he has emphasised his religious beliefs. He claims that his incarceration arises from decisions of this court to "*abolish religious liberty*". He asserts that his religious beliefs prevent him from describing transgender people as "*they*", and projects his imprisonment as some sort of punishment visited upon him because he has stood up for these beliefs. He is profoundly incorrect in this. His jailing has been brought about by his own decision to breach court orders by attending the school, when he knew that he had been ordered not to do so.

12. He has chosen to interpret the orders of court as requiring him to act in a manner inconsistent with his religious beliefs when it is plain to all that that is not the case.

13. The order of Owens J., which he has chosen not to appeal, requires him to stay away from the school. Obeying that order is not inconsistent with Christian principles, and it is strange that Mr. Burke would behave as if this was so. Indeed, it seems to me that his refusal to abide by the court order, which keeps him in jail, is a terrible waste and is akin to the religious Parable of the Talents (Matthew 25:14-30), where the servant refused to use the talents which had been given to him.

14. The lesson of that parable is to the effect that we were all given gifts which we should use to the benefit of society, and that failure to do so is a travesty. The Defendant has been

given remarkable gifts. He is highly educated and it would seem a very good teacher of history and German.

**15.** These talents are being entirely wasted while he has spends an inordinate period of time in jail due to entirely misguided, and at times, ridiculous arguments that the school and the court are trying to abolish religious liberty or are trying to force him to act in a manner which is inconsistent with his religious beliefs. Nothing could be further from the truth.

**16.** For a man of such intelligence this type of nonsense suggests to me that he is acting under the influence of other parties. It is noteworthy that when I asked him that question the last time he was before me, before he had an opportunity to express an opinion, his mother jumped from the bench behind him with her finger pointing at me and accusing me of acting under the influence of some third party.

**17.** He has acted in ways designed to prevent his release. It is difficult to avoid the conclusion that he is exploiting his imprisonment for his own ends. It is clear to me that he has been persuaded by others that he is best seen as a martyr.

**18.** As O'Moore J. noted the purpose of this form of imprisonment is to coerce an individual into obeying a court order. This is unattractive, but true. However, this purpose is turned on its head when the person concerned is prepared to endure the undoubted discomforts of incarceration in order to obtain some greater benefit, at least as they see it.

**19.** The only plausible interpretation of his actions is that he sees some advantage in his continued imprisonment, otherwise he would have either avoided his jailing or taken the opportunity to bring it to an end.

**20.** In those circumstances, his continued jailing would only facilitate whatever he feels he is currently achieving by being in prison.

- 21.** The court will not enable someone found to be in contempt of court to garner some advantage from that defiance. This factor suggests that Mr Burke's release should be open ended, and not just for the Christmas period.
- 22.** Adopting the words of O'Moore J., I have concluded that this is one of the very rare cases where the coercive imprisonment should stop, at least for the moment. This is not a unique case (*Shell v McGrath* [2006] IEHC 108, and *Wardglade Limited v Deery* [2021] IEHC 255).
- 23.** Therefore, I am ordering his release of but only on the basis that the school can come back to Court to seek his attachment and committal, or any other appropriate measures, in the event that he does not comply with the order of Owens J. To that end, I am putting this matter in for mention on the 21<sup>st</sup> of January 2025.
- 24.** However, I do not think that it should be the end of the matter. It is clear that the daily fine imposed by O'Moore J. was not draconian enough. In the circumstances, I shall direct that he must pay a daily fine of €1,400 until he purges his contempt.
- 25.** When this matter is before me again, I direct that the parties make submissions as to why the Defendant's bank account should not be sequestered, and that his salary, presently being paid by the Plaintiff or the State, should not be paid into court to satisfy the fines that he has failed to pay. I would also direct that the Attorney General and a representative of the Department of Finance attend court for the purposes of advising the court as to what mechanism is available to ensure that Defendant's salary can be paid to discharge the fine.
- 26.** I would urge the Defendant to reflect on his fruitless campaign of contempt. It would be a travesty for him to spend more years in jail over something which is entirely misconceived. Neither the Plaintiff, the court nor the State are trying to get him to change his views. That is the beauty of living in a democracy. He can hold those views. He can hold them trenchantly. He can speak about them as much as he likes. All he cannot do is breach the

law. He has been found to trespass on the property of the Plaintiff and he has been ordered not to do so. He refuses to abide by that order; that is why he is in jail. He is flaunting the law. It has nothing to do with his views.

**27.** One further point arises. At any time, the Defendant may come back to court and apply to purge his contempt.