

THE HIGH COURT

[2025] IEHC 107

[Record No. 2023/3JRP]

BETWEEN

SP

APPLICANT

AND

THE GOVERNOR OF MOUNTJOY PRISON

THE IRISH PRISON SERVICE

AND

THE DEPARTMENT OF JUSTICE

RESPONDENTS

Ruling on Final Order and Costs

1. This is a ruling on the terms of the final order and on costs arising out of the substantive judgment of the court in this matter, which was delivered on 24 January 2025: [2025] IEHC 37. For the reasons set out in the judgment, the court refused all the reliefs sought by the applicant.

2. Following delivery of the judgment written submissions were furnished by both parties. In his written submissions, the applicant indicated that it was his intention to appeal the judgment to the Court of Appeal. He further stated that if he

was unsuccessful on his appeal before that court, he intended to bring the matter before the European Court of Human Rights. In relation to costs, he stated that it would make very little difference if the court were to award costs against him, as he would ultimately be successful in his appeal either to the Court of Appeal or to the ECtHR. He also made application for liberty to take up a copy of the digital audio recording of the hearing for the purpose of his appeal.

3. In their written submissions dated 6 February 2025, the respondents submitted that as they had been entirely successful in resisting the applicant's application in the within proceedings, they were entitled to an order for payment of their costs, pursuant to the relevant legal provisions set out in ss.168 and 169 of the Legal Services Regulation Act, 2015 and under O.99 of the Rules of the Superior Courts.

4. The respondents further submitted that there was no basis on which they should either be denied an order for their costs or should have a reduction in the amount of costs awarded to them, as none of the matters set out in s.169 of the 2015 Act applied in this case. The respondents further submitted that the proceedings did not come within the ambit of the judgment of the Supreme Court in *Little v Chief Appeals Officer* [2024] IESC 53, as these proceedings could not be regarded as being public interest proceedings, as they solely related to the conditions in which the applicant was detained in Mountjoy prison.

5. Having regard to the issues raised and to the content of the written submissions thereon, the court was satisfied that it was not necessary to hold any further oral hearing in the matter.

Ruling on Costs.

6. The court accepts the submission made on behalf of the respondents that as they were entirely successful in the proceedings, *prima facie* they are entitled to an order for payment of their costs. The court also accepts that none of the grounds set out in s.169 of the Legal Services Regulation Act 2015, which might disentitle them to an order for costs, or might result in a reduction in the amount of costs awarded, apply in this case.

7. Notwithstanding that, the court rules that having regard to the circumstances of this case, it is appropriate to make no order as to costs.

8. The court has reached that conclusion for the following reasons. First, as noted by this Court in *H v The Director of Public Prosecutions & Ors* [2021] IEHC 308, cases which relate to prisoners bringing a challenge to the legality of their detention, or to the legality of the conditions under which they are incarcerated, are applications that stand in a particular category. In that case, the court noted that if an order for costs were to be made against a prisoner who had been unsuccessful in his challenge to aspects of his detention, that would have a chilling effect on the ability of prisoners generally to bring *bona fide* applications challenging the conditions of their incarceration in prison. The court stated as follows at paras. 9 and 10:

“9. Were the court to accede to the request of the respondent and the notice party, that the applicant be made personally liable for their costs, that would have a chilling effect on prisoners seeking to challenge aspects of their detention. That would not be in the interests of justice.

10. While it is undoubtedly the case that the respondents and the notice party incurred costs in defending the proceedings, in which they were

ultimately successful; nevertheless, having regard to the totality of the circumstances involved in the case, it is reasonable that the respondents and the notice party each bear their own costs, and the court so orders.”

9. Secondly, the court has had regard to the fact that the applicant was successful before this Court in obtaining leave to proceed with his judicial review proceedings, following a contested leave hearing.

10. Thirdly, the court is satisfied that the applicant passionately believes in the validity of his claim. This is not a case of an applicant prisoner bringing proceedings as a means of wasting time or settling grudges against prison staff. The court accepts that the applicant genuinely believes that he has been wronged.

11. Fourthly, the applicant behaved well throughout the hearing. He did not abuse opposing counsel, or the witness who was cross-examined by him, nor did he abuse the court at any time. He kept his questions focused and to the point. He adhered to the time limits imposed during the hearing.

12. Fifthly, the applicant is a prisoner serving a life sentence in Mountjoy prison. While there is no evidence on the matter, the court accepts that he probably does not have significant assets. Were an order for costs to be made against him, that would probably be of little practical benefit to the respondent in terms of recovery of their costs; while at the same time, saddling the applicant with a large bill of costs which would await him on his release from prison.

13. I am satisfied that in these circumstances, to make such an order in favour of the respondents, would be unjust to the applicant. It would also act as a severe disincentive to other inmates who may wish to challenge aspects of their detention.

Given that they are, by definition, in a vulnerable category of the population, being prisoners, such an outcome would not be in accordance with the dictates of justice.

14. For these reasons I refuse to make any order as to costs.

Final Order.

15. The final order of the court shall be in the following terms:

(1) Refuse the reliefs sought by the applicant;

(2) no order as to costs;

(3) the applicant has liberty to take up a transcript of the DAR for the hearing, free of charge, in the event of him wishing to lodge an appeal with the Court of Appeal;

(4) the respondents have liberty to take up a transcript of the DAR for the hearing, at their own expense.

14th February 2025