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1983 No. 209 S.S.

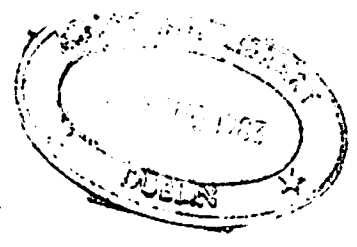
STATE (G)

4) ILRM 311 *Recorded*

THE STATE (EDWARD GALLAGHER)

.v.

GOVERNOR OF PORTLAOISE PRISON



Judgment of Mr. Justice McMahon delivered the 25th day of April 1983.

This is an application for a Conditional Order of Habeas Corpus by Edward Gallagher a prisoner in Portlaoise Prison serving a sentence of twenty years imprisonment imposed in 1976 for the false imprisonment of Dr. Herrema. The grounds of the application are:-

- (1) The withholding by the Governor of letters written by the prisoner to bank managers in Portlaoise, to Mr. Tony Gregory T.D. and to the registrars of the Supreme Court and High Court and the Governor's failure to hear the prisoner before deciding that the letters should be withheld.
- (2) That the prisoner's conviction by the Special Criminal Court is invalid because Mr. Justice Pringle was not qualified for appointment to that Court.
- (3) That the prisoner has been assaulted by fellow prisoners by reason of the prison regime and discipline imposed by the Governor.

I have received a report from the Governor on the prisoner's

complaints. Even if the prisoner's complaints about the withholding of letters were correct that would clearly not constitute such a default of fundamental requirements that the detention could be said to be wanting in due process of law. This follows from the decision of the Supreme Court in State (McDonagh) .v. Governor of Mountjoy Prison (unreported 24/7/78). However I am satisfied there was no breach of the prison rules in the way in which the Governor dealt with the prisoner's letters. The prisoner's right to communicate with other persons is subject to prison rules and in particular Rules 59 and 63. The Governor withheld letters written by the prisoner to bank managers in Portlaoise with a view to opening a bank account there for a company controlled by the prisoner. The prison rules do not entitle the prisoner to write letters of this kind or to conduct a business while serving his sentence. I accept the Governor's report that he informed the prisoner through Chief Officer Stack that business arrangements should be made through his solicitor and in my view this was a reasonable reply to the prisoner's requirements.

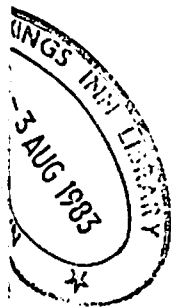
The letter written by the prisoner to Mr. Tony Gregory P.D. was written to enlist Mr. Gregory's aid in publicising the prisoner's allegations about the conduct of the prison and the characters of the

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visiting committee. The letter was tendentious and intemperate and the views expressed in it if publicised would be inimical to the peace and discipline of the prison and the Governor properly in my view withheld the letters under Rule 63 on the grounds that the contents were objectionable.

I am satisfied that the prisoner's letters to the registrars of the Supreme and High Courts were withheld because the envelopes containing the letters had been sealed by the prisoner. The prisoner was told that if he left the envelopes open the letters would be forwarded. The Governor was entitled to make sure for security reasons that the envelopes contained only their purported contents and the Governor was not bound to assume that the letters could not be diverted from their ostensible destination. The security of Portlaoise Prison requires unremitting vigilance to deal with ingenuity of prisoners who may try to subvert it.

I am satisfied that in dealing with the prisoner's letters the Governor was not acting judicially and had no obligation to afford the prisoner a hearing. The Governor's decisions did not involve any disputed questions of fact and were based on his own views as to the requirements of security of the prison.



The claim that Mr. Justice Pringle was not validly appointed to the Special Criminal Court was advanced by the prisoner in a recent application for a Conditional Order of Habeas Corpus to this Court. I rejected that claim for reasons I need not now repeat and the prisoner has appealed to the Supreme Court from the refusal of the High Court to grant him an Order of Habeas Corpus on this ground.

No foundation is shown for the prisoner's claim that the assaults by fellow prisoners which he complains of are attributable to the discipline maintained in the prison. The prisoner's views about the necessity for discipline in the prison and such measures as body searching and searching of prisoners' cells and property are clearly not objective. The recent discovery of explosives in the prison referred to in the prisoner's affidavit shows that ~~these~~ strict security measures are still necessary. There is no ground for attributing the assaults on the prisoner to the necessary steps taken by the Governor for the security of the prison. For these reasons the prisoner's claim for a Conditional Order of Habeas Corpus is refused.

J. M. M.