

APPROVED

[2021] IEHC 715



THE HIGH COURT
JUDICIAL REVIEW

2021 No. 4 JRP

BETWEEN

KEVIN COADE

APPLICANT

AND

THE GOVERNOR OF CORK PRISON
IRISH PRISON SERVICE

RESPONDENTS

JUDGMENT of Mr. Justice Garrett Simons delivered on 1 December 2021

INTRODUCTION

1. This matter comes before the High Court by way of a written petition from a prisoner detained at Cork Prison. The application is for leave to apply for judicial review pursuant to Order 84 of the Rules of the Superior Courts. The application was received in the Central Office of the High Court on 19 August 2021.
2. For the reasons set out in a written ruling of 3 September 2021, I directed pursuant to Order 84, rule 24 that the application for leave should be heard on notice to the respondents. This had been necessary so as to ensure that the court has a proper factual basis for deciding whether or not to grant leave. The ruling

explained that the application for leave would, in the first instance, be confined to an application on the papers only.

3. The Irish Prison Service filed a detailed affidavit on 18 October 2021. This judgment sets out my ruling on the application for leave to apply for judicial review.

(1). TRANSFER BETWEEN PRISONS

4. The applicant complains that his transfer between prisons in the early part of 2019 was unreasonable. It is averred that the applicant was preparing to defend himself in criminal proceedings to be heard before the Circuit Court at the end of February 2019. The implication is that the transfers were disruptive to his preparation for the trial.
5. It has been explained in the replying affidavit filed on behalf of the Irish Prison Service that the applicant had been transferred from Cork Prison to Cloverhill Prison for a period of time in January 2019. More specifically, the applicant had been transferred to Cloverhill Prison on 3 January 2019 and returned to Cork Prison on 24 January 2019. The stated purpose of the retransfer had been to facilitate consultations with the applicant's legal team ahead of his upcoming trial. The applicant's trial appears to have taken place in February 2019 and the applicant was convicted. The applicant, seemingly, brought an appeal against his sentence and conviction but this was withdrawn in or around October 2020.
6. Having regard to this chronology, it is apparent that not only is the application for judicial review made out of time, but the applicant had an alternative adequate remedy open to him in any event. An application for judicial review should generally be made within a period of three months: Order 84, rule 21. The prison transfer complained of occurred in January 2019. The applicant did

not, however, institute these proceedings until August 2021. No explanation has been provided for this delay. Moreover, if and insofar as the applicant wished to complain that the transfer had hindered the preparation of his defence, this was a matter which should have been raised, in the first instance, before the trial judge in the Circuit Court and, thereafter, as part of the appeal made to the Court of Appeal.

(2). DISCIPLINARY PROCESS

7. The applicant makes a second complaint in respect of disciplinary proceedings taken against him pursuant to the Prison Rules 2007. The disciplinary proceedings related to an incident on 31 December 2018 when a large package was thrown into the upper yard of the prison. The applicant was found to have breached discipline by receiving contraband.
8. The applicant exercised his right of appeal against the decision of first instance to the Minister for Justice and Equality. The appeal was determined on 7 January 2019 and the decision of first instance upheld. The forfeiture imposed upon the applicant had been the loss of certain privileges for a period of twenty-eight days. The forfeited privileges were in respect of specific activities/evening recreation and the use of money/credit.
9. An application for judicial review should generally be made within a period of three months: Order 84, rule 21. The appeal decision is dated 7 January 2019. The applicant did not, however, institute these proceedings until August 2021. No explanation has been provided for this delay.

CONCLUSION AND FORM OF ORDER

10. The application for leave to apply for judicial review is refused. Both complaints relate to events which occurred in January 2019. Any proceedings seeking to challenge the respective decisions should have been instituted within three months of that date. The applicant, as a prisoner, is entitled to avail of an informal procedure whereby an application for leave may be made on the papers. There is no good and sufficient reason for extending time in either instance.
11. For completeness, insofar as the first complaint is made, i.e. in respect of prison transfers, the applicant had an adequate alternative remedy available to him.
12. The registrar is requested to send a copy of this judgment and order to the parties by way of registered post.

Approved
Gemma S. Mans