Prison adjudication – whether matter now academic – matter court should allow academic point to be pursued. – discretion – Arts 6 & 8 ECHR

Neutral Citation no. [2005] NIQB 49 | *Ref:* **GIRC5306**

Judgment: approved by the Court for handing down | *Delivered:* **15/06/05**

(subject to editorial corrections)

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY LIAM CLARKE FOR JUDICIAL REVIEW

GIRVAN J

[1] In this judicial review application the applicant challenged the decision made on 23 December 2004 by the Prison Governor, Mr Wilson. The adjudication related to an alleged offence against discipline contrary to Rule 38 para. 12 of the Prisons and Young Offender Centre Rules (Northern Ireland) 1995, it being alleged that during a visit on 19 February 2004 he received an unknown article. The disciplinary charge was grounded on a statement of a reporting officer, Prison Officer Murray, dated 20 February. The prison officer alleged that during the course of a visit with two female relatives one of the visitors placed something in the applicant's right hand which he then placed down the rear of his trousers.

[2] The respondent contends that the matter is now entirely academic. The applicant was released from custody at the end of his sentence on 18 April 2005 so the decision cannot affect his future. At the time of the leave hearing the applicant had served the entirety of the award of five cellular days confinement. At that time he had also been separately awarded two days cellular confinement. Interim relief was given which had the effect of suspending his further confinement. In the result as matters stand at the moment the applicant will not to have to serve that two days extra cellular confinement. The applicant was on the most basic regime and therefore his privileges could not be affected. The applicant's disciplinary record is no longer of relevance once his period in custody comes to an end. It does not affect him outside prison. Even if he were committed to prison again for some other matter he would start of with a "clean sheet". It is clear

accordingly that the outcome of the present case can have no impact on the applicant.

[3] The House of Lords in R v Secretary of State ex parte Salem held that the court has a discretion to hear a case even if there is no longer an issue between the parties but it is a matter for the discretion of the court to be exercised with caution and cases should not be heard unless there is a public interest in doing so. The House went on to give as an example where it would be in the public interest: "When a discrete point of statutory construction arises which does not involve detailed consideration of the facts and where a large number of similar cases exist or are anticipated so that the issue will most likely need to be resolved in the near future."

[4] The applicant sought to argue that this case raises a point of general importance. Counsel contended that the leave hearing was unfair and procedurally flawed in that the Governor refused to allow him to call a witness. There is in fact no substance in this point since the Governor decided the particular point on which that witness could have given evidence in favour of the applicant. In any event the point is one that is fact specific and not of general importance. The question whether the applicant received an unauthorised object is the central question of fact in the case which would have to be resolved. No other case would turn on the facts of this particular case on that issue. Counsel sought to argue that Article 8 was engaged because the applicant was sentenced to cellular confinement which had the effect of preventing him seeing his family during the period of confinement and furthermore, the Secretary of State decided to suspend visits by his mother for four months. This latter decision was a distinct and separate decision made by the Secretary of State. It may have been consequent upon the adjudication but it was not the same decision as that of the prison governor. In the present application the applicant would have to obtain leave to amend his proceedings to raise a substantive judicial review in respect of the Secretary of State's decision. Having regard to the passage of time and the fact that no tangible benefit will accrue to the applicant the court considers it inappropriate to grant leave to amend the proceedings at this stage. On the first issue raised, namely that Article 8 was engaged because the applicant's cellular confinement resulted in an invasion of his family rights, if the decision-making was correctly carried out the inevitable consequence of an adjudication which results in cellular confinement is an interference with family rights in the broad sense. This however is not in itself sufficient to raise an argument that Article 8 has been breached in the present context. Counsel also sought to argue that Article 6 was engaged in the present instance and that the prison governor was an inappropriate person to decide the matter, not constituting an independent tribunal. The present charge does not fall within the concept of a criminal charge in the light of the authorities. I do not consider that this is an appropriate case in which to go into the wider issues raised by counsel in respect of the appropriateness of a prison governor

adjudicating in such circumstances. Even if the court considered that these are matters merit exploration in some appropriate case the case has not been properly defined in this case either in the pleadings or on the evidence. In these circumstances I accede to the argument put forward by the respondent that this case raises issues which are of an academic interest and in the exercise of the court's discretion I decline to grant leave to the applicant to pursue a point which will produce no tangible benefit for the applicant.