

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

Maguire's (Gavin) Application [2015] NIQB 19

IN THE MATTER OF AN APPLICATION FOR LEAVE TO APPLY FOR
JUDICIAL REVIEW BY GAVIN MAGUIRE

TREACY J

Introduction

[1] This is an application for leave which I heard yesterday and I said I would give my reasons today. The applicant's grounds of challenge in this case originally encompassed two aspects. First, the alleged failure of the prison governor to respond timeously following the applicant's application for compassionate temporary release ("CTR"). Secondly, the substantive decision to refuse CTR. The second limb of the challenge to the substantive decision was not pursued.

[2] So far as the first limb is concerned it is to be observed that the funeral which triggered the request for CTR has already taken place some time ago. In my view the matter is now academic and I have not been persuaded that there is any good reason in the public interest which would justify hearing this academic claim.

Discussion

[3] There are a large number of CTR applications which not infrequently come before the judicial review court on an urgent basis. The volume of such applications and the fact that they come on for hearing at short notice underlines the necessity for the adoption of proper procedures to enable decisions being taken in a proper, timeous and lawful manner. In Kane's Application (Leave Stage) 2014 NIQB 118 Sephens, J observed:

[10] Before I leave this case, I would repeat what I said in relation to previous applications. The first is that there are a number of these applications being brought. They are always brought at the last moment. That is because there needs to be a decision making procedure by the prison service and that takes time. Inevitably if the funeral arrangements are not planned to allow the prison service sufficient time then the judicial review application has to be brought on an emergency basis. The method of taking the pressure of time off is to make sure that the funeral is planned to take place at a time that will enable the prison service to make its decision and if necessary or appropriate for it to be challenged. I would encourage some structure being put in place to ensure that the prison service calculate how much time they require and they inform applicants immediately that the funeral should be planned to coincide with that time scale so that one does not have emergency judicial review application being brought, as here, the day before the funeral takes place.

[11] The second matter that I would repeat is to again encourage the prison service to anticipate that they may have to deal with similar judicial review applications at short notice and under pressure of time. That they should prepare now by gathering together a bundle of the decided cases, any relevant authorities and have a skeleton argument which could be adapted for use in any future case. I have suggested that the skeleton deals with the margin of appreciation to the prison service under article 8 ECHR and also the circumstances in which mandamus might be issued as opposed to quashing the decision and requiring a different governor to reconsider."

[4] Rule 65(1) of the Prisoner and Young Offenders' Centre Rules (NI) 1995 ("the Rules") requires that "special attention **shall** be paid to the maintenance of relationships between a prisoner and his family". Rule 65(2) provides that "prisoners shall be **encouraged and assisted** to establish and maintain such relations with persons and agencies outside prison as may, in the opinion of the governor, best promote the interests of his family and his own social rehabilitation". In addition to these provisions rule 74 imposes a mandatory obligation on the governor to consider the prisoner's requests (such as applications for CTR) and provide a response "**as soon as possible**".

[5] It is incumbent on governors to have proper systems and procedures in place so that decisions on CTR are communicated as soon as possible to prisoners and, if so requested, their solicitors. Proper, lawful and efficient communication of decisions, especially those in which a challenge can be expected, is self-evidently of fundamental importance. Systems and procedures should be kept under review to ensure that best practice in this area is developed and maintained. Since I have come to the clear view that this particular application is academic I dismiss the application for leave.