

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CASE MNIHCV 2019/0020

BETWEEN

D’VAUNTE HENRY

JOHN ALLEN

FITROY FARRELL

ASHEL BRAMBLE

STEPEHEN MOLYNEAUX

Claimants

AND

HER MAJESTY’S PRISION

SUPERINTENDENT BENNET KIRWAN

THE GOVERNOR

Defendants

APPEARANCES

The claimants appeared in person.

Ms Renee Morgan for the defendants.

2019: SEPTEMBER 24

RULING

On whether prisoners can claim judicial review of decisions by the Prison Superintendent

- 1 **Morley J:** I am asked to strike out a claim by five prisoners for judicial review of decisions made by the Prison Superintendent Kirwan in how the incentive and earned privileges scheme (IEPS) is being implemented.
- 2 The IEPS was introduced to the prison from 2016 to encourage good behaviour. It has the support of the UN Mandela Rules. This court delivered a judgment on the IEPS on 16.09.19, concerning complaint brought by Molyneaux in separate proceedings, and reference should be made to it when reading this ruling¹.
- 3 The IEPS places the prisoners at one of three status levels: basic, standard, or enhanced. Each level leads to differing times out of the cell, and eligibility for various privileges, which include access for example to electronic equipment.
- 4 The inmates are unrepresented, coordinated by Molyneaux². Counsel Morgan appears for the defendants, and is characteristically focused in her assessment of the claim as a legal pleading, arguing it is improperly presented, so that she applies for strike out under **r26(3) CPR 2000**, while also arguing Molyneaux, not being a lawyer, should not hold himself out as representing the other four.
- 5 The prisoners' complaints are offered in the neat handwriting of Molyneaux, filed on 17.05.19 as a 'law suit' and lists unhappiness as follows:
 - a. Denied access to prisoners at standard and enhanced levels to fm/am radios with headphones and either an ipod or mp3;
 - b. Denied access to enhanced prisoners to twice weekly computer use, each time for 1.25 hours;
 - c. Denied allowance to continue tv viewing if others attend religious worship;
 - d. Alleged change in the IEPS conditions without notice or proper process;
 - e. Provocation by officers of prisoners to enter conflict so that their status level is reduced;

¹ See Stephen Molyneaux v HMP et al 2019, case MNIHCR 20018/0016, delivered on 16.09.19.

² The claimants will be referred to by their surnames for ease of reading and no disrespect is intended by not referring to the legalise of whether claimants or applicants.

- f. Written reporting by officers on prisoners' files which cannot be challenged as to accuracy; and
 - g. The Superintendent being unavailable to see prisoners to discuss said various grievances.
- 6 By a further handwritten document filed on 27.06.19, Molyneaux has articulated a 'statement of claims' as follows (sic):
- a. "Breach of contract sign between both parties
 - b. Breach of Prison rule 9(2)(a) and rule 27(2)
 - c. Breach of section 13 (Regulation 41) C.O.C
 - d. Unfair distribution of the Incentives and Earned Privileges scheme
 - e. The unlawful practice of holding matter against prisoners that the prisoner have no opportunity to challenge
 - f. The unlawful practice of provoking prisoners
 - g. The unfair practice of turning off the television when other go to religious ministries and education classes"
- 7 Further, at hearing on 20.09.19 specific oral complaints were made as follows:
- a. Henry complains he should have his ipad returned as he is at enhanced;
 - b. Farrell complains, being at standard, he is being asked to sign a compact under the IEPS which he thinks will mean he must work to secure his level, when he is unfortunately an amputee without his right leg.
- 8 This court is receptive in appropriate circumstances to upset of the prisoners who wish to find some method to air this. However, it is important prisoners understand there is a mechanism to air grievances through the prison visiting committee (PVC), while the High Court is a place of last resort, not first. All the instant complaints ought first to be heard by the PVC, under **ss6 & 21 Prison Act** cap 10.04 and **rule 43 Prison Rules**, which ought to make inquiries of the prisoners, the officers, and the Superintendent, and then write a decision suggesting resolution. This decision might then be subject to judicial review at the High Court by either side, where appropriate, bearing in mind a primary consideration for judicial review is whether

- the PVC has decided out of all reason (and not simply whether one party disagrees with it), or whether its rational suggestions have been irrationally ignored by the prison.
- 9 It is to be noted in this action, notwithstanding the neat handwriting of Molyneaux, there has been filed no formal record of any decision, by the Superintendent or the PVC, against which to seek judicial review.
- 10 I also agree that Molyneaux cannot formally represent the other four, but the court is alive to the realities that none are men of deep education and none lawyers, so that Molyneaux, who in his cell has busied himself with some success learning court procedures finds himself their coordinator, which for now will be acceptable.
- 11 However it follows unfortunately for the prisoners Counsel Morgan is correct, that in the absence of any decision records the pleadings do not disclose grounds for judicial review, and so I strike out the claim under **r26.3(1)(b) and (1)(c) CPR 2000** as currently not disclosing in law any 'reasonable ground' for bringing it as it is framed, and as a misconceived application thereby being 'an abuse of the process of the court'.
- 12 In the circumstances I make no order as to costs.
- 13 Finally, Counsel Morgan has raised concern there may be a further concerted campaign of incorrectly-raised complaint from prisoners with endless motions to the High Court, being arguably frivolous and vexatious, marshalled through Molyneaux, with the effect that the prison cannot be run effectively. We shall see what next, and if this arises, the court will quickly stop such litigation.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

24 September 2019

