

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CASE MNIHCR 20018/0016

BETWEEN

STEPHEN MOLYNEAUX

AND

HER MAJESTY'S PRISON

HIS EXCELLENCY THE GOVERNOR

SUPERINTENDENT OF PRISONS BENNET KIRWAN

HEAD OF PRISON FUNCTION EUSTACE ALLEN

APPEARANCES

The claimant appeared in person.

Ms Renee Morgan appeared for the respondents.

2019: MARCH 21, 22

SEPTEMBER 16¹

JUDGEMENT

On a claim for damages for overlong daily incarceration by a serving prisoner

- 1 **Morley J:** The claimant Stephen Molyneaux has been serving a life sentence for murder since 2002. Representing himself, following filings on 10.04.18, he seeks relief and damages for

¹ Judgment has been delayed only because the Judge left Montserrat on 05.04.19 and has not been back to sit on island until 16.09.19, on which date this judgment will be delivered.

what he has argued are breaches in 2016-17 of the prison rules at the hands of Prison Superintendent Bennet Kirwan. Molyneaux² has filed 58 pages of largely handwritten material, having gleaned many legal principles from reading textbooks in custody. The Superintendent has been represented by the Chambers of the Attorney General, and in particular by Counsel Morgan, who has done much good work processing this claim so it is receivable to the court and clear as to its complaints.

- 2 In short, Molyneaux complains:
 - a. His ipod has been damaged and should be replaced and returned to him;
 - b. Legal textbooks, a 1tb hard-drive, and a piece of wood should be returned to him;
 - c. He should be compensated for confiscated snacks;
 - d. He has been made ill by how he has been confined, leading to joint pains and hypertension, for which he should receive damages; and
 - e. He was wrongly kept daily in his cell for 20 hours or more from 11.08.16 until 23.11.17, for which he should receive damages, during which for a time he was unfairly placed near a noisy and unsanitary mentally ill inmate and was also not allowed to associate with others.
- 3 Concerning the first three complaints (2a-c), these have been and will be further dealt with by the Prison Visiting Committee, not at the High Court. Concerning the fourth (2d), there is no independent evidence to support the claim, and to the contrary by a letter of 12.07.18 Dr Lowell Lewis reports Molyneaux' blood pressure normal on 16.09.16 and 26.06.17, so I dismiss it.
- 4 However, this case requires some careful assessment of the fifth complaint, about which there was a trial on 21 and 22.03.19.
- 5 Molyneaux is a large man who is quite capable of being manipulative, intimidating, violent, and stubborn. In fairness, he has been well-behaved in court, making intelligent argument. However, from observing him in the courtroom, and reading prison reports on him³, his

² The parties will be so referred for ease of reading and no disrespect is intended by not writing out the legalese of whether claimant or defendant.

³ See trial bundle p37 ex SM2, p70-71 affidavit of Kirwan of 03.10.18, p75-77 ex BK1, p78-81 ex BK2, p 82-83 ex BK3, p84-85 ex BK4, p86-87 ex BK7.

capacity to be very difficult is clear. For some years, under a different Superintendent, he had a number of privileges, which included where he did work in the prison and keeping electronic and other items in his cell. For a time, he was the longest serving inmate and this seems to have accorded him a certain status, so that in his mind he developed a sense of entitlement to these privileges. His circumstance diminished on 13.01.16 when his 1tb hard-drive was confiscated as containing inappropriate material of a violent and pornographic nature. In tandem, in 2015 Keith Munns who is the prison advisor to the UK Foreign and Commonwealth Office (FCO) authored an Incentives and Earned Privileges Scheme (IEPS)⁴, consistent with the UN Mandela Rules on the standard minimum rules for the treatment of prisoners⁵, which the Montserrat authorities set about in 2016 moving into policy. As part of this, there was a review of keeping electronic devices, leading to the confiscation of Molyneaux' ipod in February 2016, containing many songs and some video material, about which he became most unhappy. This set in train confrontation with the prison authorities, leading in August 2016 to his threatening staff and on 09.08.16 he is said to have assaulted Prison Officer Lee. From this point, over the next 15 months, he was kept in his cell for at least 20 hours daily.

6 To the reader, it may seem petty to launch legal action over the loss from his cell of an ipod, hard-drive, snacks and a piece of wood, and to complain about being unable to read legal texts. However, this court is wholly mindful of how in prison small comforts have a big place in the lives of inmates whose daily routines are so closely guarded. Following their loss, it can readily be understood how an inmate may then brood perhaps obsessively about small slights as the hours slip slowly by. In this sense, the court respects how upset Molyneaux has become and why he has marshalled his time so assiduously over many hours, offering so many pages of handwritten material to raise complaint. Though without liberty, prisoners have rights too, under the **Montserrat Constitution** and under the **Prison Act**, and if violated, may properly raise complaint at the High Court.

7 Coincidental to the allegation of assault on Officer Lee, the IEPS came into force at the prison. There were to be three levels of accommodation: basic, standard, and enhanced. Every inmate was required to sign an IEPS compact, which was an agreement to work within the scheme.

⁴ See trial bundle, p55-57 ex KB1, p58-61 ex KB1, p219-32 ex KM2.

⁵ See trial bundle, p233-35 ex KM2.

On doing so, an inmate would automatically reach the standard level. Owing to his growing anger with the regime under Superintendent Kirwan, Molyneaux refused to sign the compact. He received notification on 27.09.16 that until he signed his agreement he would be kept at basic level⁶. The IEPS established that, concerning time out of a cell⁷: at basic this would be 'in cell other than for meals, shower, 1hr exercise'; at standard, 'unlocked from 06.30, locked up from 17.00'; and at enhanced, 'unlocked from 06.30, locked up from 20.00'. As a result of stubbornly refusing to sign the compact, Molyneaux ended up being held at basic level possibly indefinitely, so that he remained in his cell for usually at least 20 hours a day until the timings of the 'basic' regime changed on 23.11.17, being in all about 15 months.

- 8 The chronology for the case shows: he was placed in cell 18 of Block C from 09.08.16-11.08.16; then in the juvenile cell in block E from 11.08.16-10.09.16; then in cell 18 in block C from 10.09.16-12.04.17; then again in the juvenile cell in block E from 12.04.17-25.05.17; then in cell 24 in block D from 25.05.17-21.07.17; then again in the juvenile cell in block E from 21.07.17-05.09.17; then again in cell 18 in block C from 05.09.17-26.10.17; and then in cell 11 in block B from 26.10.17-23.11.17. On 23.11.17, the timings-change in basic status meant being 'out of cell from 07.00-14.00'.
- 9 Concerning the time he had out of his cell from 09.08.16-23.11.17, there is a spreadsheet⁸ running to 60 pages, which mostly but not always records the timings as minutes, and adding up days with less than 120 minutes (two hours) or unrecorded, there were 356 days.
- 10 Molyneaux complains specifically that being held in his cell during 356 days for 22 hours or more without meaningful human contact amounts to 'cellular confinement', with which prison expert Keith Munns appears to agree (at para 7 of his affidavit of 02.10.18⁹).
- 11 However, crucial to Molyneaux' case is that cellular confinement is regulated under the **Prison Act**, so that some careful assessment of the Act is needed.
- 12 On Montserrat, under **section 21 Prison Act** cap 10.04:

⁶ See trial bundle, p35 ex SM2, p36 ex SM3, and p62 exKB3.

⁷ See trial bundle, p59-60, ex KB2.

⁸ See trial bundle p88-148 ex BK6.

⁹ See trial bundle p218.

21. (1) The Governor in Council may make rules for the regulation and management of prisons, the conduct, discipline and duties of the officers employed therein, and the classification, treatment, employment, discipline and control of prisoners.

13 **Rules 6, 17, 26, 30, 33, 34 and 35 Prison Rules** read:

6. (1) For the encouragement of the good conduct, industry and rehabilitation of prisoners the Superintendent shall, subject to the approval of the Governor, establish a system of privileges for the prison...

17. (1) A prisoner not engaged in outdoor work shall be given exercise in the open air for not less than one hour each day, if health permits...

26. (1) Where it appears desirable, for the maintenance of good order and discipline or in his own interests, that a prisoner should not associate with other prisoners, either generally or for particular purposes, the Superintendent may arrange for a prisoner's removal from association accordingly. (2) A prisoner shall not be removed under this rule for a period of more than 24 hours without the authority of a member of the Committee, or the Governor. (3) The Superintendent may arrange at his discretion for such a prisoner to resume association with other prisoners, and shall do so if in any case the medical officer so advises on medical grounds.

30. A prisoner commits an offence against discipline if he— ... (b) commits an assault; ... (g) intentionally obstructs an officer in the execution of his duty; ... (q) is disrespectful to the Superintendent or to any Prisons Officer or to any person visiting the prison; (r) uses threatening, abusive or insulting words or behavior; ... (u) disobeys or fails to comply with any rules applying to him; (v) makes any false and malicious allegation against a Prisons Officer; (w) repeatedly makes

groundless complaints; (x) in any way offends against good order and discipline...

33. (1) If he finds a prisoner guilty of an offence against discipline, the Superintendent or the Senior Officer in charge may, subject to rule 35, impose one or more of the following punishment— (a) a caution; (b) forfeiture for a period not exceeding 28 days of any privileges under rule 6; (c) exclusion from associated work for a period not exceeding 14 days; (d) stoppage of earnings for a period not exceeding 28 days; (e) cellular confinement for a period not exceeding 3 days; (f) forfeiture of remission of sentence for a period not exceeding 28 days...

34. (1) Where at an inquiry held pursuant to rule 31(3) the Superintendent or the Senior Officer of the prison decides that, if the prisoner were found guilty, the punishments provided under rule 33 would, having regard to the nature and circumstances of the offence, be inadequate, the Superintendent, or the senior Officer of the prisons with the agreement of the Superintendent, may refer the charge to the Visiting Committee hereinafter referred to as the "Committee".
(3) The Committee shall inquire into the charge, and if it finds the prisoner guilty it may, subject to sub-rule (4), impose one or more of the following punishments—
... (d) cellular confinement for a period not exceeding 56 days...

35. ...(2) No punishment of cellular confinement shall be imposed unless the medical officer has certified that the prisoner is in a fit state of health to be so dealt with.

14 Attached to the **Prison Rules** at schedule is the **Code of Conduct for Prison Officers**, concerning the Superintendent, of which **conduct rules 9, 11 and 14** are relevant:

9. (a) He shall exercise a general supervision over the general management and discipline of the prison, and shall report to the Governor any irregularities... (b)

And he shall make such Standing Orders as are necessary for the management and discipline of the prison and he shall ensure that such standing orders are not contrary to any provisions of these rules...

11. He shall strictly conform to the provisions of these Rules and all the laws relating to the prison, and shall require obedience to the same from all subordinate officers, and rigidly enforce them on the prisoners. He shall be responsible for every relaxation or infringement of such rules or laws.

14. He shall at least once in every 24 hours make every effort to visit each cell at the Prison in which a prisoner is undergoing cellular confinement, and shall see that every prisoner under punishment is visited during the day, at intervals of not more than three hours by the appointed officer.

- 15 The point Molyneaux makes is that the IEPS is in conflict with **rule 33** as it allows for 'cellular confinement' (in the form of 'basic' status) way beyond the three days contemplated as punishment in **rule 33(1)(e)** or 56 days contemplated in **rule 34(3)(d)**. He complains the Superintendent is under a duty under **conduct rule 9** to ensure any 'standing orders' are not in conflict with the **Prison Act**, while under **conduct rule 11** is responsible for infringement, and suggests the IEPS in creating an ability to inflict cellular confinement outside the scope of **rule 33** and **rule 34** is in such conflict. Moreover, there should be no punishment without charge under **rule 30**, requiring an adjudication, and Molyneaux points to the allegation of assault under **rule 30(b)** on Officer Lee never being processed, so that there was never an adjudication meriting cellular confinement, which in any event should not have been longer than 3 days, (or 56 days if considered by the Prison Visiting Committee, which never occurred), and required medical approval under **rule 35**, which was never given. Moreover, if in cellular confinement, **code of conduct 14** requires the Superintendent to visit every day, and to ensure there is contact with a guard every three hours, which was not followed. He argues for being in a fight with Officer Lee unadjudicated he was tossed into cellular confinement for 15 months, wholly outside the terms of the Prison Act. And in being so confined, he was denied association with other inmates, required under **rule 26**, and should

not have been denied such for more than 24 hours without the authority of the Governor per **rule 26(2)**, which was never sought.

- 16 There is in tandem complaint that when he was in (I think) cell 18 he was housed too near an inmate who was mentally ill, noisy and unsanitary, amounting to a breach of his rights under **article 4 of the Constitution** as 'inhuman and degrading treatment'. However, as per **Franklin Campos v AG** ANUHCv 2007/0338, following dicta in the Privy Council case of **Thomas v Baptiste et al 1999** 3WLR249, I do not find this a description of conditions which so amount, as being near another prisoner, with ill health, does not involve '*so much pain and suffering or such deprivation of the elementary necessities of life that [this] amounted to treatment which went beyond the harsh and could properly be described as inhuman and degrading*'. Moreover the prison has limited resources and must use its cells as needed, so I dismiss this element of the claim.
- 17 Balanced against cellular confinement amounting to more than 22 hours daily in the cell is **rule 17**, which suggests the **Prison Rules** allow for incarceration up to 23 hours a day, as only one hour of exercise is required, suggesting perhaps cellular confinement must be something different, though noting it is not defined by the Act.
- 18 Moreover, **s21 Prison Act** allows the Governor in Council to re-write the **Prison Rules**, so the question arises whether the IEPS may amount to new prison rules, redefining the permissibility of cellular confinement, passed by the Governor in Council, particularly noting the IEPS required the signature of Governor Carriere (as appears on the document front cover¹⁰).
- 19 At first glance, there seems something unfair about Molyneaux being held at basic status for 15 months, requiring he spend so long in his cell. However, peering deeper, he brought this on himself, by refusing to sign the IEPS compact, which in my judgment had become a point of over-bearing pride on the part of a difficult and stubborn man in a private battle with the prison authorities. To be released from his discomfort he need only have signed his name. In fairness to the authorities, seeing he was damaging himself, eventually the regime pertaining to the period out of cell at basic was increased, to avoid the very problem Molyneaux' intransigence

¹⁰ See trial bundle, p58 ex KB2.

- was creating. In a sense, he won that battle, but by an act of cutting off his nose to spite his face.
- 20 His argument has been to say he could not sign the compact as to do so would be, as he put it, 'illegal', as the IEPS was illegal, because in conflict with the **Prison Rules**. On this point, I find the argument specious and insincere: it is disingenuous to say he had to inflict misery on himself for fear greater comfort offered by the Superintendent would be in breach of the rules. The truth was he did not want to cooperate.
- 21 On analysis, mindful the IEPS is designed to improve conditions for prisoners consistent with the UN approved Mandela Rules, in my judgement the scheme amounted to re-writing parts of the **Prison Rules**, as permitted by the Governor in Council under **s21 Prison Act**, so that from August 2016 the **Prison Rules** were no longer to be in force insofar as they might conflict with the IEPS. It is not clear to me whether the correct procedure was adopted by Governor Carriere, but as it is for the claimant to prove his case, I find on balance he has not shown the procedure was flawed.
- 22 Even if I am wrong, and it can be demonstrated (subsequent to this judgment) to be a fact the IEPS was not correctly introduced by the Governor in Council, then I find the laudable aspiration of the scheme to mitigate it being in conflict with the Prison Rules, so that in combination with how Molyneaux brought his discomfort on himself through pride and stubbornness in refusing to sign the compact, I find no damages arise.
- 23 Moreover, while I do find it is 'cellular confinement' to be kept in a cell for more than 22 hours, as Keith Munns said, nevertheless the IEPS specifically anticipated cellular confinement will arise at basic status (until changed in November 2017), which is supposed to act as an incentive for prisoner cooperation and is the very reason on signing the compact a prisoner is elevated to standard status, with then 10.5 hours out of cell daily. The short point is that Molyneaux imposed basic status on himself, and therefore imposed cellular confinement on himself, by refusing to sign, so that culpability for his discomfort lies at his own feet not the Superintendent.

- 24 Molyneaux has further complained that his ability to associate with other prisoners was improperly curtailed, but that is only if the **Prison Rules** applied, which I have found were superseded by the IEPS. And if I am wrong about their superseding for want of proper procedure, then I find on the facts, having myself been three times to the prison so I am familiar with its layout, Molyneaux was wholly not cut off from other inmates; though in his cell he was able to talk through the cell door, play games (depending on which cell he was in), and interact regularly, so that I do not find he was specifically 'removed from association' as contemplated by the **Prison Rule 26**.
- 25 There is an unhappy lesson arising from this unusual case. Prisoners are expected to be obedient to authority, which must be exercised fairly, subject if needed to judicial oversight. However, it is not for a prisoner to lock himself into conflict with authority, and thereby into his cell, later complaining of wholly self-inflicted consequences. On the other hand, while the IEPS is in principle laudable as a fair scheme, in theory it could be unfairly administered, for example by refusing to elevate a cooperating prisoner to standard status, or by corrupt manipulation of who receives enhanced status. If so, such behavior will be accountable to the courts, and possibly to the police. That said, nothing of such concern has occurred in this case.
- 26 To ensure all the prisoners are informed of the regime, I expect the prison to have during the day one copy of the IEPS in combination with the superseded **Prison Rules** to be available to the prisoners to read and contemplate.
- 27 In all the circumstances the application by prisoner Molyneaux for various heads of damages for wrongful overlong daily incarceration for 15 months is dismissed. I respectfully encourage him to sign the compact. I make no order as to costs.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

16 September 2019