DELIVERED
the 30th day of October 1985

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (CROWN SIDE)

IN THE MATTER OF AN APPLICATION BY RAYMOND PIUS McCARTNEY FOR JUDICIAL REVIEW

LORD LOWRY L.C.J.

The applicant was sentenced to life imprisonment on 12th January 1979 and since then has been imprisoned in the Maze Prison. He seeks an order of certiorari to quash a decision of the Secretary of State for Northern Ireland ("the respondent") given on or before 12th June 1985, to the effect that a certain Sean Keenan, who was in May 1985 elected a Sinn Fein member of Belfast City Council, cannot visit the applicant in prison. He has an interest in the subject matter of the application in that the decision has deprived him of visits by a person who, it was stated, had regularly visited him in prison since January 1977 and has been a friend of the applicant, who is now aged 30, since childhood.

The applicant was informed by an Assistant Governor on 12th June 1985 that Sean Keenan had not been permitted to visit him because of his, Mr. Keenan's, recent election as a Sinn Fein councillor. The applicant's solicitors wrote to the Governor of the Prison on 16th September 1985 about the refusal and received a reply dated 3rd October 1985 from the Northern Ireland Office in these terms:

"Your letter of 16 September to the Governor, H.M. Prison, Maze, Cellular, about the refusal to allow Mr. Sean Keenan, a Sinn Fein councillor, to visit Raymond McCartney, a life sentence prisoner in Maze, has been passed to me for reply.

The Secretary of State has power, under Rule 58(1) of the Prison Rules (Northern Ireland) 1982 to impose restrictions, either generally or in a particular case, on the communications permitted between a prisoner and other persons. It was under the authority of that provision that it was decided, in view of Sinn Fein's support for the use of violence to achieve political ends, that it would not be appropriate for Sinn Fein elected representatives to be allowed to visit prisons or prisoners other than members of their immediate families.

As Mr. Keenan was elected to Belfast City Council as a Sinn Fein councillor in May 1985 he is no longer permitted to visit Raymond Pius McCartney. If Mr. McCartney wished to raise any matter with Mr. Keenan he can of course do so by letter.

Yours faithfully,

(the signature is illegible)"

Rule 58(1) of the Prison Rules (Northern Ireland) 1982 made in pursuance of Section 13 of the Prison Act (Northern Ireland) 1953 states:

> "The Secretary of State may, with a view to securing discipline and good order or the prevention of crime or in the interests of any persons, impose restrictions, either generally or in a particular case, on the communications to be permitted between a prisoner and other persons."

This provision qualifies the general entitlement to visits which is conferred on persons by rule 59. The application has been made more than three months after the cause of complaint has arisen but I am satisfied that no person will suffer hardship or unfair prejudice to his rights if the relief sought is granted.

The applicant's contention is that the Secretary of State improperly and unlawfully exercised the discretion conferred on him, in that he:

(a) failed to have any or proper regard for all relevant considerations including the fact that Mr. Sean Keenan had been visiting the applicant in prison on a regular basis since 1977 without there ever being a complaint about his conduct;

(b) took into account irrelevant considerations including the fact that the said Mr. Keenan was elected to public office as a representative of Sinn Fein in May 1985;

(c) failed to give either the applicant or Mr. Keenan an opportunity to present their case before the relevant decision was taken;

(d) acted without any evidence being available to him that Mr. Keenan could be a threat to discipline, good order or the prevention of crime.

The applicant also contends that the Secretary of State acted in excess of his jurisdiction by acting without any evidence being properly available to him. That summary of the argument is taken from the skeleton argument of the applicant.

The respondent's case relies first on the affidavit of the Belfast Town Clerk which proves that Sean Keenan was on 17th May 1985 elected to Belfast City Council as a Sinn Fein candidate and secondly on the affidavit of the Permanent Under-Secretary at the Northern Ireland Office sworn on behalf of the respondent in the following terms:

> "2. It is the declared policy of Sinn Fein to take power in Northern Ireland 'with a ballot paper in one hand and an Armalite in the other'. This policy was reflected in a speech made by Mr. Danny Morrison, then Sinn Fein Publicity Officer, at the Sinn Fein Annual Conference in 1981. As reported in the Irish Times of 2 November 1981, Mr. Morrison said 'Who here really believes we can win the war through the ballot box? But will anyone here object if, with a ballot paper in this hand and an Armalite in this hand, we take power in Ireland?'.
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> 3. According to a report in An Phoblacht Republican News of 4 November 1982 a

resolution was passed at the annual conference of Sinn Fein on 30 October 1982 requiring 'all candidates in national and local elections, and all campaign material, to be unambivalent in support of the armed struggle'.

4. Prominent members of Sinn Fein have from time to time made public statements in support of the IRA. Mr. Gerry Adams MP, President of Sinn Fein was reported in the Sunday Tribune of 3 November 1985 as having said 'If by some freak the Ard Comhairle repudiated the legitimate armed struggle of the IRA you will be looking for another president'.

5. Those Sinn Fein candidates who are elected as public representatives expressly or impliedly endorse the policies of Sinn Fein.

6. The restrictions imposed by the Secretary of State on visits by Sinn Fein public representatives have been imposed with a view to securing discipline and good order, the prevention of crime and in the interests of the prisoner.

7. Visits by public representatives of parties which support the use of violence are liable to raise the morale of prisoners convicted of terrorist crimes, and provide opportunities to encourage such prisoners in various forms of action designed to disrupt discipline and order within the prison.

8. It is not conducive to the promotion of the social rehabilitation of a prisoner that he should be permitted to have visits from those known to support the use of violence for political ends."

On this evidence the respondent contends that he properly exercised his discretion under Rule 58(1). When considering this argument I have had regard to the principle enunciated by Lord Greene, M.R. in Associated Provincial Picture Houses Limited v. Wednesbury Corporation [1948] 1 K.B. 223 with respect to the administrative exercise of a statutory discretion. At p.230 he said:

> "It is true to say that, if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts

can interfere. That, I think, is quite right; but to prove a case of that kind would require something overwhelming, and, in this case, the facts do not come anywhere near anything of that kind. I think Mr. Gallop in the end agreed that his proposition that the decision of the local authority can be upset if it is proved to be unreasonable, really meant that it must be proved to be unreasonable in the sense that the court considers it to be a decision that no reasonable body could have come to. It is not what the court considers unreasonable, a different thing altogether."

The judgment concluded (p.233):

"In the result, this appeal must be dismissed. I do not wish to repeat myself but I will summarize once again the principle applicable. The court is entitled to investigate the action of the local authority with a view to seeing whether they have taken into account matters which they ought not to take into account, or, conversely, have refused to take into account or neglected to take into account matters which they ought to take into account. Once that question is answered in favour of the local authority, it may be still possible to say that, although the local authority have kept within the four corners of the matters which they ought to consider, they have nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. In such a case, again, I think the court can interfere. The power of the court to interfere in each case is not as an appellate authority to override a decision of the local authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by acting in excess of the powers which Parliament has confided in them."

I have also been assisted by Mr. Campbell's reference to Lord Diplock's observation in C.C.S.U. v. Minister for the Civil Service (A.C.) 374 at p.410:

"By 'irrationality' I mean what can by now be succinctly referred to as 'Wednesbury unreasonableness' (Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation [1948] 1 K.B. 223). It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

I am satisfied that the action taken by the respondent clearly complies with the criteria adopted in those cases.

Turning to the applicant's counter arguments, so far as point 1(a) is concerned, the Northern Ireland Office letter of 3rd October 1985 shows that regard was had to the position of members of prisoners' immediate families, a description which did not apply to Mr. Keenan, and therefore there is no substance in the contention that no proper regard was had to the relevant personal considerations. As to point 1(b), I do not consider that Mr. Keenan's election to public office as a representative of Sinn Fein was irrelevant in the circumstances described in Sir Robert Andrew's affidavit.

Miss McDermott for the applicant, fairly enough, makes the point that the ban seems to apply only to elected representatives and not to unsuccessful candidates, party workers or other identifiable supporters of Sinn Fein. On the other hand, the fact that it might be reasonable to impose a wider ban does not, in my opinion, render it unreasonable to impose a ban on an easily identified class of public representatives to which Mr. Keenan belongs. As to the need to hear the applicant or Mr. Keenan, the decision was not a judicial one and the facts taken into account were, as far as they went, incontrovertible. Therefore the complaint in paragraph 1(c) of the argument concerning the respondent's failure to give the applicant or Mr. Keenan an opportunity to present his case is also without substance. With regard to the complaint in paragraph 1(d) that the respondent acted without any evidence that Mr. Keenan could be a threat to discipline, good order or the prevention of crime, in so far as this consideration played a part, as no doubt it did, in the respondent's decision, justification for not adopting a policy of 'wait and see' is, in my opinion, supplied by the precedent of R v London County Council [1915] 2 K.B.466 at p.491. Even though, by virtue of rule 58, paragraphs 5 and 6, the visit must take place in

the sight and hearing of a prison officer, the decision to ban visits by Sinn Fein public representatives is still defensible, in my view, by Wednesbury standards.

It is natural to ask why the respondent's decision should be deemed reasonable when this Court has held that members of local authorities cannot lawfully take steps to prevent Sinn Fein councillors from participating in local government business. The difference is that Sinn Fein councillors are, in the present state of the law, entitled as individuals to take their seats and that the other members of the council have no legal power to prevent them from doing so, whereas the respondent here has a right under Rule 58(1) to regulate visits to prisoners according to the discretion conferred on him by that rule, so long as the discretion is reasonably exercised within the meaning of the Wednesbury case. The anomaly is explained by the absence of a statutory power in the one case and its presence in the other. As I observed recently in the Cookstown Council case:

> "I do not subscribe to the view that Sinn Fein has to be regarded as a lawful organisation or by necessary implication as a legitimate political party just because it has been allowed, since 1975, to operate as a political party without being proscribed. That is a different thing from saying, in the present state of the law, that individual members of Sinn Fein, if not otherwise disqualified, cannot legally stand for election and take their seats as councillors if elected, but they are entitled to do so despite their membership of Sinn Fein and not because of it."

Affidavit evidence has been tendered this morning, on behalf of the respondent, that Mr. Keenan appears from the records to have made just four visits accompanied by his wife between June 1980 and December 1984. Even if his visits had been much more numerous, I should have decided this

application in the same way, acting on the Wednesbury principle. The application is accordingly refused.