

**IN THE HIGH COURT OF NEW ZEALAND
HAMILTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
KIRIKIROA ROHE**

**CIV-2018-419-176
[2018] NZHC 1613**

BETWEEN

ARTHUR WILLIAM TAYLOR
Applicant

AND

THE CHIEF EXECUTIVE OF THE
DEPARTMENT OF CORRECTIONS
First Respondent

THE HEARING ADJUDICATOR OF
WAIKERIA PRISON
Second Respondent

Hearing: On the papers

Counsel: Applicant in person
A Powell and J Watson for Crown

Judgment: 2 July 2018

JUDGMENT OF WHATA J

*This judgment was delivered by me on 2 July 2018 at 4.00 pm,
pursuant to Rule 11.5 of the High Court Rules.*

Registrar/Deputy Registrar

Date:

Solicitors: Crown Law, Wellington

[1] I have an urgent application for a declaration that the Crown ought not to take any action to implement or carry out the sentences imposed by the second respondent on 9 May 2018 on the applicant in respect of two charges of disobeying a lawful order and one charge of having an article without permission of an officer.

[2] Mr Taylor has filed judicial review proceedings seeking, in short, to challenge the lawfulness of the Unit Rule Book Prisoner Information Miro Unit (Miro Rules) under which he was charged. He says at paragraph 72 of his statement of claim:

72 The Miro Rules in their entirety, that were purportedly made by the Prison Manager, that govern the management and operation of Miro Unit were not lawfully authorised as they were simply carried over from when they governed Miro Unit's operation as a Youth Unit detaining prisoners of predominantly High security classification. The Miro Rules are not appropriate for the management of low and minimum security adult prisoners.

73 There was no consideration given by the Waikeria Prison Manager as to whether the Miro Rules were appropriate for adult low and minimum security prisoners and complied with r 44(2) of the Regulations and s 6(1)(g) and s 6(1)(f)(ii) of the Act and they are not appropriate for the management of low and minimum security adult prisoners.

[3] It is unnecessary to expand further on the merits or otherwise of the claim as, quite properly in my view, Mr Powell for the Crown has accepted that they raise a seriously arguable case. I also note that the Crown is prepared to abide by any decision made by the Court acknowledging that the balance of convenience would appear to favour the grant, because Mr Taylor faces a reasonably significant penalty for the alleged breach of the rules, including five days off privileges in respect of the charge of having an article without the permission of an officer, an effective sentence of seven days cell confinement and 28 days off privileges in respect of charges of disobeying lawful orders.

[4] By way of further background and the reason for the urgent application, is that a Visiting Justice recently refused an adjournment of Mr Taylor's appeal against the imposition of the penalties and is due to consider the appeal tomorrow morning at 9.00 am.

[5] For present purposes, I am satisfied to simply record that there is a serious issue to be tried in respect of the claim of illegality and the balance of convenience clearly favours an order in the nature sought by Mr Taylor to preserve his position, pursuant to s 15(1) of the Judicial Review Procedure Act 2016. I acknowledge, however, the Crown's concerns that the making of such an order does not become a signpost for breach of the Miro Rules. I record that the only basis upon which the present declaration is made is because Mr Taylor has filed judicial review proceedings raising an arguable matter. Nothing in this judgment should be seen to suggest that the rules are in fact unlawful or otherwise ultra vires. Any prisoner that breaches those rules runs the usual risk of penalty.

[6] For the foregoing reasons, I make the declaration as sought, namely, the Crown ought not to take any action to implement or carry out the sentences imposed by the second respondent on 9 May 2018 on the applicant in respect of the charges, pending the outcome of the High Court proceedings.

[7] I grant leave to the respondents to come back to this Court, if necessary, for any further direction or assistance. As the application was not opposed, I make no orders as to costs (and it appears that Mr Taylor is, in any event, self-represented).