

**[2003–04 Gib LR 174]****ROCCA v. ROCCA**

SUPREME COURT (Pizzarello, A.J.): October 7th, 2003

*Family Law—domestic violence—injunction—breach—committal to prison by Supreme Court for specified period under common law powers not subject to remission*

The respondent was committed to prison for a breach of an injunction made by the Supreme Court, granted under the Domestic Violence and Matrimonial Proceedings Ordinance.

The Attorney-General applied to the court for directions in relation to the imprisonment of the respondent, and whether reg. 6(1) of the Prison Regulations applied to this situation, *i.e.* whether or not the Superintendent of Prison had the power, and was under a duty, to consider remission for the respondent, as regards his imprisonment.

The Attorney-General submitted that (a) remission was granted at the discretion of the Superintendent of Prison; (b) it applied to a person who was serving a sentence of imprisonment; and (c) the respondent was in prison and therefore the Prison Regulations applied, whether he had been imprisoned under the common law or under s.5 of the Domestic Violence and Matrimonial Proceedings Ordinance.

The respondent submitted that (a) the Superintendent was under a duty to consider remission; and (b) there was an express power in the Prison Regulations for him to do so.

The petitioner submitted in reply that (a) the Superintendent must not defy a direct order of the court; (b) the court had fixed a date for the respondent's release, which must be adhered to by the Superintendent, or he would be guilty of contempt; and (c) s.5 of the Domestic Violence and Matrimonial Proceedings Ordinance did not apply to this situation, as that section was confined to the magistrates' court, and the common law powers of committal possessed by the Supreme Court were unaffected.

**Held**, making the following ruling:

An order of the Supreme Court committing a contemnor to imprisonment for a specific period had to be served in its totality and reg. 6(1) of the Prison Regulations concerning remission did not apply (para. 8).

**Legislation construed:**

Domestic Violence and Matrimonial Proceedings Ordinance 1998, s.5:  
The relevant terms of this section are set out at para. 2.

Prison Regulations 1987, reg. 6(1): The relevant terms of this sub-section are set out at para. 2.

*L. Yeats* for the Attorney-General;

*D. Hughes* for the petitioner;

*J. Daswani* for the respondent.

1 **PIZZARELLO, A.J.:** This is an application by the Attorney-General for directions in relation to the term of imprisonment to be served by the respondent, following a breach of an injunction made in the Supreme Court on August 14th, 2003. On September 12th, 2003, the respondent was committed to prison to October 24th, 2003, in respect of the said breach. The injunction was granted under the Domestic Violence and Matrimonial Proceedings Ordinance.

2 Mr. Yeats drew the court's attention to reg. 6(1) of the Prison Regulations 1987. That reads:

“A prisoner serving a sentence of imprisonment for an actual term of more than five days may, on the ground of his industry and good conduct, be granted remission in accordance with the provisions of this regulation.”

Remission, he submitted, is granted at the discretion of the Superintendent of Prison, and applies to a person who is serving a sentence of imprisonment. He referred to s.5 of the Domestic Violence and Matrimonial Proceedings Ordinance:

“A person who is in breach of an injunction or other order of the court to which this Ordinance applies, shall be liable to imprisonment for a period not exceeding 6 months or to a fine not exceeding level 3 on the standard scale, or to both.”

The respondent's situation is covered by the terms of the Regulations, irrespective of whether the contemnor has been imprisoned under common law powers or under proceedings brought under the Domestic Violence and Matrimonial Proceedings Ordinance. In the United Kingdom, the normal rules of remission apply to contemnors, and of course this is understandable as it helps the prison authorities to keep discipline.

3 Mr. Daswani, for the respondent, associated himself with Mr. Yeats' submission. The Superintendent, he said, has a duty to consider remission and there is the express power in the Regulations to do so.

4 Mr. Hughes submitted that the Superintendent must not defy a direct order of the court. The court fixed a date for his release and that has to be observed by the Superintendent on pain of being guilty of contempt himself. This order does not relate to a s.5 situation. That section is

confined to the magistrates' court. The powers there are given by statute and do not impinge on the common law powers of committal which the Supreme Court possesses and does not lose as a result of the Domestic Violence and Matrimonial Proceedings Ordinance. A contemnor can be released early, but he must purge his contempt and make an application. Mr. Hughes observes the situation in England is a little different, insofar as the Superintendent's discretion is concerned. There, the discretion is given directly by an Act, namely s.45(3) of the Criminal Justice Act 1991. The provision which gives the discretion to the Superintendent in Gibraltar are regulations and must need give way to the judge's direct order.

5 In reply, Mr. Yeats submitted that if the contemnor is in prison he is imprisoned. Therefore he is a prisoner and the Regulations apply.

6 Having heard the arguments, I rule that an order of the Supreme Court committing a contemnor to imprisonment for a specific period has to be served in its totality and the Prison Regulations concerning remission do not apply.

*Ruling accordingly.*

*[November 25th, 2003: The learned judge refused to grant an application to release the respondent from custody on the ground that he had not purged his contempt, and also made an order for joint custody of the children, but with care and control to the petitioner and supervised access to the respondent. In addition, the learned judge made a judicial separation order and an order that the respondent should not approach within 50 metres of the home or within 30 metres of the petitioner.]*