[2020] IEHC 715

THE HIGH COURT
JUDICIAL REVIEW

[2019 No. 670 JR]

BETWEEN

REGINALD CARROLL

APPLICANT

AND

JUDGE OF THE DISTRICT COURT, COURTS SERVICE, DIRECTOR OF PUBLIC PROSECUTIONS AND THE COMMISSIONER OF AN GARDA SÍOCHÁNA

RESPONDENTS

JUDGMENT of Mr. Justice Meenan delivered on the 3rd day of December, 2020

Background

1. The background to these judicial review proceedings is a long running serious dispute between the applicant and his neighbours. This dispute has erupted into violence on several occasions over the past number of years. These incidents, together with certain road traffic matters, have been investigated by An Garda Síochána as follows: -

   (i) Alleged assault on the applicant on or about 23/24 November 2018. The file in respect of this investigation was furnished to the office of the third named respondent on 4 December 2019. A no prosecution direction issued on 21 January 2020;

   (ii) A fire took place at the applicant's home on 25 August 2019. This matter was investigated and a file was furnished to the third named respondent. A no prosecution direction was issued on 9 July 2020;

   (iii) The applicant was prosecuted in the District Court for dangerous driving contrary to s. 53 of the Road Traffic Act 1961 following a complaint made by one of his neighbours. He was also prosecuted for failing to have a valid certificate of road worthiness. On 26 September 2019, the applicant was convicted of both offences; and

   (iv) The applicant is being prosecuted in the District Court for threatening behaviour contrary to s. 6 of the Criminal Justice (Public Order) Act 1994. This incident also concerned his neighbours. A bench warrant for the arrest of the applicant was issued on 25 July 2019 and he failed to appear for the hearing of the prosecution. The warrant was executed at Galway District Court on 13 November 2019 and the applicant was remanded on bail. This prosecution was due to be heard on 28 May 2020.

2. Arising from the incident of 24 November 2018, members of An Garda Síochána attended the applicant's property. Forensic evidence was gathered. However, a rock which the applicant wishes to be examined for forensic evidence was not part of this. This rock was posted by the applicant some six weeks after the alleged incident. While it was photographed at the scene of the alleged assault, the applicant, according to the affidavit of Inspector Peter Conlon of An Garda Síochána, never told the investigating officers that it was used as a weapon and no reference was made to it in the course of his statement.

3. The applicant appeared in person before this Court seeking certain reliefs by way of judicial review.

Earlier Judicial Review Proceedings

4. On 22 October 2018, the High Court (Noonan J.) refused to grant leave to the applicant to apply by way of judicial review for certain reliefs sought by him in an *ex parte* application. This refusal was appealed in the Court of Appeal and, on 21 October 2019, Edwards J. upheld the Order of the High Court. I refer to *Carroll v. A Judge and The Director of Public Prosecutions* [2019] IECA 258.

5. In those judicial review proceedings, the applicant sought leave to apply for an order of *certiorari* quashing the decision of the therein second named respondent not to prosecute certain parties on foot of complaints made by the applicant concerning incidents of alleged harassment, assaults, trespass to his property and threats to kill him. The parties in question were the applicant's neighbours, already referred to. The applicant also sought reliefs relating to criminal proceedings before Clifden District Court, presided over by the first named respondent. The applicant complained that the first named respondent was, on two occasions, 22 February 2018 and 26 April 2018, requested to recuse herself on the grounds of alleged bias but that she refused to do so. I will be referring to the judgment of Edward J. later in this judgment.

6. It is clear from reading the judgment of the Court of Appeal, and the papers filed by the applicant in the instant case, that there is an overlap between these proceedings and the earlier judicial review proceedings. It appears that the High Court, when granting leave in this matter, was not informed by the applicant of the earlier proceedings. Notwithstanding the fact that the applicant appeared in person, failing to inform the Court granting leave of earlier relevant proceedings is unacceptable.

Reliefs sought by the Applicant

7. In considering the reliefs sought by the applicant, I had the benefit of both written and oral submissions from Mr. Conor O'Higgins BL, on behalf of the first, second and fourth named respondents, and Mr. Conor McKenna BL, on behalf of the third named respondent (the DPP). I will consider each of the reliefs sought as set out in the Order of the High Court granting leave of 25 September 2019.

8. "An order of mandamus instructing the Commissioner to immediately fast-track

> forensic results of 24.11.18. Forensics taken by Crime Scene Investigation 24.11.18 at applicant's house following assault with weapons by ---. To be produced within 14 days from order. To include 'rock' used as a weapon produced from scene, photographed by CSI on 24.11.18 whilst applicant was in hospital. This has my blood on underside and undoubtedly – DNA on upper where he held it, confirming his presence at scene, see photos exhibited."

The history concerning "*the rock*" was set out in the affidavit of Inspector Peter Conlon. Inspector Conlon stated that the applicant never told the investigating members that it was used as a weapon and the applicant made no reference to it in the course of his

statement to the Gardaí. In any event, this Court has a very limited jurisdiction concerning the investigation of alleged crimes. I refer to the decision of Clarke J. (as he then was) in *Fowley v. Conroy* [2005] 3 I.R. 480 when he stated: -

> "…However, I am satisfied that a victim may have an entitlement to ensure that an inquiry into the crime concerned is not dealt with in a capricious manner. For example, a refusal to investigate the crime for no good reason may be reviewable even though it must be clear that the courts would afford a very wide margin of appreciation to the gardaí as to any legitimate basis for not embarking upon an investigation of a crime. It would, therefore, only be in the most exceptional cases indeed that a jurisdiction to intervene could arise. …"

In this case, there was an investigation by the Gardaí and the matter was referred to the DPP. I am, therefore, satisfied that this case falls well short of being so exceptional that it would warrant an intervention from this Court.

9. "An order of mandamus instructing DPP to report to the High Court urgently after

> review of forensic results, awaited for some 9 months to explain what action is proposed and particularly why if no action is to be taken. High Court then to review itself and order prosecution if it sees fit. Assisted by outside police force/Garda Ombudsman as there is reason to be concerned about impartiality of Clifden police, see CA 2017/360 Civil Bill accepted by Master into High Court on 11.7.18."

and: -

> "Similarly, an order of mandamus as above, after 3 months from 25.8.18. Arson/attempted murder on applicant at home, instructing DPP to report to High Court as to progress of investigation to ensure expedient and effective action is being taken. High Court to order action under mandamus as it thinks fit to ensure effective action in the interests of justice."

It should have been clear to the applicant from the judgment of Edwards J. in the Court of Appeal that this Court does not have the jurisdiction to make the orders sought by the applicant. I refer to the following passages from the judgment of Edwards J.: -

> "9. A further legal consideration relevant to the first set of reliefs claimed by the appellant and directed at the second named respondent is that under Irish law the DPP enjoys a partial immunity from judicial review. While in some circumstances a decision to prefer charges, or sometimes not to prefer charges, can be challenged, such circumstances are not the norm and where they arise they represent an exception to the general rule which is that in most cases such decisions are not reviewable.

10. In the case of *DC v The Director of Public Prosecutions* [2005] 4 IR 281 Denham J stated the general position in these terms:

> 'The Constitution and the State, through legislation, have given to the respondent [the DPP] an independent role in determining whether or not the prosecution should be brought on behalf of the people of Ireland. The respondent having taken such a decision, the courts are slow to intervene.' "

As to when a court might intervene, Edwards J. stated: -

> "12. However, in *The State (McCormack) v. Curran* [1987] ILRM 225 the Supreme Court held that the DPP's decision can, in certain circumstances, be subject to review. In his judgment in that case, Finlay CJ, made clear that the Supreme Court envisaged those circumstances as being quite limited. While the court did not seek to list exhaustively the situations in which the courts might intervene, it is manifest from the former Chief Justice's judgment that an applicant seeking a judicial review of the exercise of the DPP's discretion has to demonstrate something like mala fides, an improper motive or the application of an improper policy, and that if the evidence adduced on the application for judicial review does not exclude the reasonable possibility of a proper and valid decision by the DPP then he/she cannot be called upon to explain that decision or to give the reasons for it. …"

In this case, no *prima facie* case of *mala fides* has been made out, and such information as is before the Court does not exclude the reasonable possibility of a proper and valid decision having been made by the DPP.

10. "Order of *certiorari* quashing the decision to prosecute applicant on sole evidence of

> --- for dangerous driving and threatening behaviour respectively. Contrary to guidelines for Prosecutors 2016 4th Edition, the witness evidence from hearing of dangerous driving on 25.10.18 (as transcript/hearing defence submissions exhibited) and when they are suspected of arson and two counts of attempted murder it is offensive to Constitution, European Convention on Human Rights, all principles of law, justice and decency to proceed on word of these individuals against their victim on basis of flimsy suspect cases.
>
> In the threatening behaviour case it being an impossible scenario requiring a bottle thrown to engage in 3 x 90 degrees mid-air turns, see grounds/affidavit."

and: -

> "Alternatively on above, to initially stay these cases awaiting DPP decision on arson/attempted murder against complainants. If decided to proceed against applicant, to initially require DPP to justify this decision in front of High Court and require cases to be decided in High Court as part of these proceedings."

Here, again, the applicant seeks the quashing of decisions to prosecute. In this case, the prosecution was brought by members of An Garda Síochána. In previous paragraphs, I have set out a number of authorities on applications to review decisions of the DPP to prosecute, or not to prosecute. It seems to me that these principles apply equally to

prosecutions brought by members of An Garda Síochána for summary offences that are subject to any directions that the DPP may give. I am satisfied that the applicant has identified no "*mala fides*" or that An Garda Síochána, in deciding to prosecute, were influenced by any improper motive or improper policy. Further, in seeking these reliefs, the applicant seeks to impugn the evidence that was given by referring to another incident in respect of which the third named respondent has directed that no prosecution be taken. Therefore, the stay, as sought by the applicant, does not arise.

11. "An order of *certiorari* quashing the decision of Judge --- to issue a bench warrant

> and any other hearing/conviction in Clifden District Court on 25.7.19 against applicant due to non-attendance, when the Galway Courts Service were in possession of a valid doctor sickness certificate from the day before, as noted in grounds and affidavit."

In my view, this matter is moot as the bench warrant in question was executed on 13 November 2019 and the applicant entered into bail. In any event, the District Judge had jurisdiction to issue a bench warrant and this Court was referred to the following passage from the judgment of Kearns P. in *McDonagh v. District Judge Watkin* [2013] IEHC 582: -

> "It is common case that the District Judge had a busy list on the morning in question. It is part of the judge's function to ensure that the list moves efficiently and the effective management of any court list requires that a person who is required to answer a charge at a particular point in time be present in court at the appointed time. It is not for the accused person to control the management or operation of the court lists. Thus, I am quite satisfied that the District Judge was acting reasonably and within jurisdiction in issuing the warrant for the arrest of the applicant in circumstances where the applicant had failed to appear in the courtroom at the appointed time. There is no entitlement in any litigant to assume that a judge will afford a defendant some special consideration by dealing with a case at a time of a defendant's choosing or be in any sense 'compelled' to put matters back to second or third calling to accommodate him or her. The court list would become unworkable if such slipshod practices became the norm."

The applicant maintained that the Courts Service were in possession of what he describes as a "*valid doctor's sickness certificate*". Even were this the case, this does not preclude the District Judge issuing a bench warrant.

12. "To order under mandamus the recusal of Judge --- from any proceedings

> regarding the applicant, including those already commenced."

In his earlier judicial review proceedings, the applicant also claimed that the District Judge should recuse herself. I refer to the following passage from the judgment of Edwards J.: -

> "The second matter in respect of which the appellant claims relief by way of judicial review relates to certain criminal proceedings before Clifden District Court, presided over by the first named respondent. The appellant complains that the first named respondent was, on two occasions, i.e., on the 22nd of February 2018 and on the 26th of April 2018, requested to recuse herself on the grounds of alleged bias but that she refused to do so. …"

Also, in his grounding affidavit, the applicant repeats certain matters which were referred to in the earlier judicial review proceedings (see para. 40, Edwards J.). The applicant alleges "*collusion*" between the District Judge and the Courts Service concerning the handling of the court file, that the District Judge had previously issued bench warrants against him and that the District Judge did not dismiss the dangerous driving prosecution of 25 November 2018.

13. The issue of the court file was dealt with in the course of the judgment of Edwards J. and the applicant is not entitled to have this matter re-litigated. This is all the more so in circumstances, which I have referred to already, of the failure on the part of the applicant to bring to the attention of the Court that granted leave the decision of the Court of Appeal in his earlier proceedings. The test to be applied by a court when the issue of recusal is raised is well established. I refer to the following passage from the judgment of Denham J. (as she then was), quoting a decision of the Constitutional Court of South Africa, in *Bula Ltd. v. Tara Mines Ltd*. [2000] 4 I.R. 412: -

> "…the correct approach to this application for the recusal of members of this court is objective and the onus of establishing it rests upon the applicant. The question is whether a reasonable, objective and informed person would on the correct facts reasonably apprehend that the judge has not or will not bring an impartial mind to bear on the adjudication of the case, that is a mind open to persuasion by the evidence and the submissions of counsel. The reasonableness of the application must be assessed in the light of the oath of office taken by the judges to administer justice without fear or favour, and their ability to carry out that oath by reason of their training and experience. …"

I am satisfied that the applicant did not in his statement of grounds, his grounding affidavit or his submissions to this Court provide any facts to satisfy this test.

Further Submissions

14. After the conclusion of the hearing, the applicant submitted to me further legal submissions and other documentation. The applicant did this in the knowledge of having been told, when the hearing concluded, all parties having had an opportunity to make their case and/or to refute the case being made against them, that I would not accept further submissions. Therefore, I have not considered these further submissions and documentation.

Conclusion

15. By reason of the foregoing, I refuse the applicant the reliefs sought and dismiss his proceedings. As this judgment is being delivered electronically, the parties have fourteen days within which to make written submissions on any consequential orders.