

**THE HIGH COURT
JUDICIAL REVIEW**

[2023] IEHC 121

2023 6 JRP

BETWEEN

STEVEN PENROSE

APPLICANT

AND

**AIDAN HANNON
AND
GER MOORE**

RESPONDENTS

JUDGMENT of Mr. Justice David Holland delivered on 13 March 2023

1. This is an application by the above-entitled applicant, Mr Penrose, acting as a lay litigant in seeking leave to seek judicial review. Mr Penrose identifies himself as detained in Mountjoy Prison and the papers were filed in the Central Office pursuant to the written procedure made available to prisoners seeking leave to seek judicial review. The papers seeking leave to seek judicial review were stamped received in the Principal Registrar’s Office of the High Court on 6 March 2023.

2. The Statement Of Grounds is dated 17 September 2022. It is headed, in the title, “Civil Case”. It identifies the reliefs sought as Certiorari and Mandamus. It states the grounds upon which relief is sought by the words “See letters/statements attached”. It is verified by a brief verifying affidavit, in usual form, sworn by Mr Penrose in Mountjoy Prison on 17 September 2022 and also citing the attached letter and statement.

3. Aidan Hannon and Ger Moore are identified in the papers as members of An Garda Síochána.

4. The four-page handwritten statement/letter, which purports to set out the substance of the application for leave to seek judicial review, commences with the words:-

“I want to sue Garda Aidan Hannon and Leixlip Garda Station for false imprisonment on the 17 May 2017. I tried to charge him with this offence but the Garda Ombudsman said I had no case.

So I want to lodge a civil case before the High Court for damages as I was falsely imprisoned on this charge for over six months before he dropped the charges.”

5. The remainder of the papers of the statement, in essence, consists of assertions that Garda Hannon and Garda Moore, in various ways, contrived to have Mr Penrose remanded in custody on a charge related to an alleged attempted robbery at Kilcock, County Kildare, on 14 May 2017. It is alleged that they did so on the basis of perjured evidence and a falsified charge of an attempt to rob a vehicle, which charge was not supported by the evidence of the alleged victim. This is but a brief account of the allegations made but it suffices for present purposes. The statement is accompanied by copies of the relevant Statement of Charges dated 16 August 2017 and various associated witness statements or extracts therefrom. I make no findings as to the truth or falsity of the allegations.

6. Essentially, Mr Penrose asserts that, on the basis of the wrongs alleged – generally, falsified evidence - he was remanded in custody on the charge of attempted robbery of a named person and thereby falsely imprisoned, having been refused bail, until the matter came on for trial almost twelve months later, at which point the charges were dropped.

7. It is clear that Mr Penrose’s purpose in these proceedings is to claim, and the nature of the claim made is for, damages for false imprisonment. Proceedings to that end ought properly to be prosecuted by way of plenary action and not by way of application for judicial review. His attempt to proceed by way of judicial review is misconceived.

8. Further, it may be inferred from the papers that any false imprisonment of which Mr Penrose complains ended some time in 2018, or conceivably in 2019, but no later. Accordingly any public law act capable of being challenged in these proceedings occurred, at latest some time in 2019. As recorded above, the Statement Of Grounds is dated 17 September 2022 and the verifying affidavit, was sworn on 17 September 2022. The papers were lodged in the Central Office of the High Court only on 6 March 2023.

9. By O. 84, r. 21(1) of the Rules of the Superior Courts, *“An application for leave to apply for judicial review shall be made within three months from the date when grounds for the application first arose”*. On any view of matters, Mr. Penrose has clearly not complied with that time limit. Accordingly, it falls to me to refuse the application for leave to seek judicial review in this case unless it appears proper to extend that three-month period in Mr. Penrose’s favour.

10. O. 84, r. 21(3) of the Rules of the Superior Courts permits the court to extend that time limit. However, the first and explicit requirement of O. 84, r. 21(3), before such an extension shall be granted, is that an application has been made for such an extension. Mr. Penrose in the present case has made no such application.

11. Even had such an application been made O.84, r.21(3) provides that the court shall:-

“only extend such period if it is satisfied that
(a) there is good and sufficient reason for doing so, and
(b) the circumstances that resulted in the failure to make the application for leave within the
period mentioned in sub-rule (1) either:
(i) were outside the control of, or
(ii) could not reasonably have been anticipated by
the applicant for such extension.”

12. The papers submitted by Mr. Penrose and now before me do not, in any manner, address the criteria of O. 84, r. 21(3) for extension of time, much less satisfy them.

13. Accordingly, I refuse the application made by Mr. Penrose for leave to seek judicial review

- As misconceived in that any action for damages for false imprisonment should be prosecuted by plenary proceedings and not by judicial review.
- By reason of his failure to comply with the three-month time limit stipulated by O. 84, r. 21 of the Rules of the Superior Courts.

14. In making that order I have had regard to **A.A.A.**² in which the Supreme Court recited the test for leave to commence judicial review laid down in **G. v. the Director of Public Prosecutions**.³ As applicable to the present case, I am satisfied that Mr. Penrose has failed to satisfy me in a *prima facie* manner and by the facts asserted in the papers before me, that his application has been made within the relevant time limits or that that the only effective remedy, on the basis of those assertions, would be an order by way of judicial review or that procedure by way of judicial review is, in all the circumstances, a more appropriate method of procedure than plenary process. As stated, in my view, and insofar as the relief claimed appears to be in damages, Mr. Penrose’s complaints appear proper to plenary proceedings rather than to judicial review.

15. In the ordinary way the allegations made against them and my having refused leave to seek judicial review may not come to the attention of Mr Hannon and Mr Moore. As this judgment is given in public, I consider that it would be unjust that they would remain unaware of the allegations made against them in this application. I direct that a copy of this judgment be sent to them care of the Commissioner of An Garda Síochána.

David Holland
13 March 2023

² A.A.A. and J.A.A. and E.A.A and S.A.A. v. The Minister for Justice, Ireland and the Attorney General [2017] IESC 80. Charleton J., 21 December 2017.

³ [1994] 1 IR 374.