THE SUPREME COURT

[APPEAL NO. 173/2008]

MacMenamin J.
Dunne J.
Charleton J.

BETWEEN:

KEVIN TRACEY

APPELLANT

AND

DISTRICT JUDGE TOM O'DONNELL AND THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENTS

Judgment of Mr. Justice John MacMenamin dated the 30th day of April, 2020

Introduction

1. This is an appeal against a judgment and order of McGovern J. in the High Court ([2008] IEHC 60). In a written judgment dated the 6th March, 2008, the appellant was refused judicial review.

2. The appellant's application arose from a prosecution against him in the District Court before the first-named respondent on a charge by then reduced to that of driving without due care and attention contrary to s.52(1) of the Road Traffic Act, 1961. The appellant was convicted of the offence and fined the sum of €400, together with witness expenses of €200 in default. The appellant sought to quash that order. The appellant appeared on his own behalf in the District Court and subsequently. He has, however, some considerable experience in conducting his own cases.

3. In the High Court judgment, McGovern J. addressed a number of issues which the appellant argued warranted the granting of judicial review. The appellant submitted that (a) the first-named respondent had wrongly refused to adjourn the case in circumstances where the appellant had previously applied to the prosecution authorities for statements of the evidence intended to be given; that is, a "Gary Doyle" application; (b) the first-named respondent had refused to dismiss the case on the grounds that there was a six-month time limit on the making of a complaint which had been exceeded; (c) there had been insufficient evidence for any conviction; and (d) hearsay evidence had unlawfully been admitted.

General Observations

4. Several points may be made clear at the outset. First, the High Court is not a court of appeal from the District Court. In a judicial review application where an order of *certiorari* is sought in relation to a District Court order, a court conducting such a review will give consideration as to whether that discretionary remedy - as opposed to appeal - is actually necessary in the particular case under consideration. Judicial review is not to be viewed

simply as an alternative avenue of appeal. In general, judicial review concerns, rather, questions going to the jurisdiction of a court.

5. Second, questions of sufficiency of evidence are generally matters for appeal. The long-established jurisprudence on these questions is outlined toward the conclusion of this judgment.

6. Third, it is necessary to recognise that, in the administration of justice, there are areas where judges are entitled to exercise their discretion so as to ensure that the ends of justice are achieved. In considering whether to grant judicial review, a court may, on occasion, be asked to assess whether a District judge exercised his or her discretion fairly. It must be remembered that an area of discretion is one where, within the boundaries of the Constitution and the law, a District judge may have to carry out a balancing exercise between the interests of one party or another and the interests of justice itself. Absent clear unfairness, a review court will be slow to intervene.

7. Fourth, the primary aim in any District Court proceeding is that justice be fairly administered in *that* court. This can impose duties on parties before the Court as well as the judge to seek to ensure a court does not err in law or fall into unconstitutionality. Judicial review must not be seen as being some objective or end in itself.

8. Finally, judicial review is a remedy which will require expedition in the interest of either or both parties, and in the interest of justice itself. Judicial review applications, and decisions and appeals therefrom, should not be permitted to linger or wither from neglect or studied indifference. In judicial review as in other areas of law, justice delayed is justice denied. These are of course general observations, but to a greater or lesser extent may have a bearing on whether, in a given case, the discretionary remedy of review should be granted. The issues raised by the appellant are now dealt with in sequence. He has provided a written record of what transpired in the District Court which is of considerable assistance.

Application for Adjournment and for Witness Statements

9. The appellant applied for an adjournment on the grounds that he was not ready to proceed and that prior to the hearing he had applied for the statements of intended prosecution witnesses to be furnished to him which had not been complied with. The appellant's application for an adjournment and for witness statements must be seen as one composite application made at the outset of the case. The District Court proceeding which came before the first-named respondent was a simple one, although initially it appeared that the appellant might potentially encounter a more serious road traffic charge. As matters evolved, the only single charge which the appellant had to face in court was that described at para. 2 earlier.

10. The precise facts surrounding the application for the statements were unclear as neither the appellant nor the prosecuting solicitor had available to the Court either the original or a copy of the letter which the appellant told the Court he had sent to the prosecution authorities. What was available was a responding letter refusing to furnish the witness

statements. The appellant did not identify any other basis for adjourning the case such that, were the matter to proceed he would be caused significant prejudice.

11. The Court was informed that a Ms. O'Dowda had travelled from England for the hearing that day. It was clear that the case did not concern a serious criminal charge, but rather, by the time it got to court, an allegation very much at the lower end of the scale of seriousness. This was not a situation where, by reason of the complexity of the evidence or gravity of the charge, the appellant was entitled as a matter of constitutional fairness to obtain intended witness statements. In deciding whether to accede to the application to adjourn, the District judge had to weigh up these factors. In refusing to grant an adjournment, the first-named respondent was acting in an area of judicial discretion where, absent a finding of constitutional unfairness, a court will be slow to intervene. There is nothing to indicate that he exercised his discretion other than in a judicial manner in the circumstances.

12. In the High Court, McGovern J. pointed out that, while a stay had been granted in associated proceedings, no stay had been granted in this District Court prosecution (para. 4). He observed that the first-named respondent was entitled to proceed with the hearing on the basis that there was no stay, and that a witness had travelled from the United Kingdom (para. 7). He observed that the appellant had not shown any prejudice to him as a result of not receiving a "Gary Doyle" order (para. 9). The respondent dealt with the issues before him fairly, and within the limits of his discretion (para. 10).

The Contention that the Summons was Out of Time

13. The learned High Court judge correctly ruled that the was nothing to suggest that the summons had been issued out of time (para. 12; see also, ss.10 and 12 of the Petty Sessions Act, 1851, now superseded by s.1 of the Courts No.3 Act, 1986, and *Tracey v. District Judge Malone and Ors.* (Supreme Court Appeal No. 262/2009) delivered on the same day as this judgment).

14. McGovern J. pointed out that the road traffic offence alleged against the appellant was said to have occurred on the 30th August, 2004. An application for summons was made on the 17th February, 2005. It was, therefore, compliant with s.10 of the Petty Sessions Act, 1851, which requires that a complaint be made within six-months from the offence. He went on to observe that s.1(7)(a) of the Courts No. 3 Act, 1986 provides that any provision in an enactment passed before that Act relating to the time for the making a complaint shall apply, with necessary modifications, in relation to an application for a summons (para. 12). McGovern J. correctly held that the complaint was made within the prescribed time. There is no indication that he erred in so finding.

Insufficient Evidence

15. The prosecuting Garda, Garda Deirdre Ryan, gave evidence as to the background of the complaint made to her. The appellant had claimed in the High Court that she had lied in the District Court in her description of the events (para. 13). McGovern J. pointed out that Garda Ryan had merely testified as to the nature of the complaint which had been made to her by a member of the public, to the effect that the appellant had driven his car at

speed on the footpath; that the complainant, Ms. O'Dowda, had been staying with her aunt, Ms. Boyle, in Park Lane at the time; that she was disabled (erroneously stated as physically disabled); and that the motor car was driven in such a manner as to force her to press herself up against a wall and caused her to be in fear of being knocked down (para. 13). He considered that the transcript of the District Court proceeding merely reflected that Garda Ryan had received the complaint and that there was nothing in the transcript which indicated that the case had been decided upon the basis of hearsay evidence or that effectively Ms. O'Dowda had been unable to testify (para. 14). He held that the District Judge was entitled to hear evidence from Ms. Boyle as to having received a complaint from her niece and the reason for her upset (para. 15).

16. The first-named respondent inquired from Ms. Boyle, and apparently was himself satisfied, as to Ms. O'Dowda's competence to testify as a witness. The case advanced against the appellant was that Ms. O'Dowda, a pedestrian, had walked into the laneway at Park Lane, Chapelizod towards Ms. Boyle's home (para. 13). She was walking up the left-hand footpath as seen from the entrance to that laneway. It was said that having driven his car into Park Lane where he also lived, the appellant then drove up onto the footpath where Ms. O'Dowda was walking in a manner which caused her fear and apprehension and, it was claimed, compelled her to move toward the wall at the side of the footpath (para. 13).

17. There were matters in the prosecution's case where there was room for cross-examination. Arguably, there were issues as to whether Mr. Tracey's car mounted the pavement after it had gone past Ms. O'Dowda or beforehand; whether Ms. O'Dowda actually did have to pin herself against the wall; and whether, assuming Mr. Tracey's car had come from behind Ms. O'Dowda, there in any case was adequate room for him to go past as he went up the laneway. Mr Tracey did cross-examined the witness, but the cross-examination was careful and guarded; it did not disclose exactly what he claimed had happened on the day, or what his case was going to be if he had to go into evidence.

18. At the conclusion of the prosecution evidence, the District judge held that there was a *prima facie* case against Mr. Tracey. He invited him to go into evidence or make a statement. But not only did the appellant refuse to take this opportunity, he actually refused to play any further part in the proceedings whatever, indicating that in his view that there were other remedies available (para. 18).

19. At the time he refused to participate further, the District Court proceedings were still in being. The District judge was entitled to hold that there was a *prima facie* case against him. It would have been open to Mr. Tracey to testify and convince the District judge that his account was a correct one. But he opted not to do this. He played no further part in the proceedings and ultimately, having heard all the evidence, the District judge proceeded to convict and fine him. McGovern J. held there was no indication that the District Judge had exceeded his jurisdiction (para. 21). The High Court judge was entitled to reach that conclusion.

20. The appellant faces a further difficulty as result of his own decision to seek judicial review. An accused person is entitled to a trial in due course of law; but this is not to be seen as a counsel of perfection. It is not impossible that mishaps will occur in a prosecution in the District Court. The transcript records a number of interventions in the evidence by the prosecuting solicitor which at best might be described as unhelpful. Such matters can be addressed on appeal where there will be a complete rehearing. This was a case where the appellant did have a right of appeal which he could have exercised in order to raise the issues now before this Court many years after the case was heard. But he did not avail of this right. Insofar as the appellant makes the case that the evidence against him was insufficient, he had the right to appeal against the decision to the Circuit Court where the matter would have been heard by an independent judge. Had the judge been satisfied that Mr. Tracey had no case to answer, or that he was to receive the benefit of the doubt, he would have been entitled to an acquittal. There was an adequate alternative remedy available to the appellant (see, *The State (Stanbridge) v. Mahon* [1979] 1 I.R. 214; *The State (Glover) v. McCarthy* [1981] I.L.R.M. 47; *The State (Pheasantry Limited) v. Donnelly* [1982] I.L.R.M. 512; *Aprile v. Naas UDC* (Unreported, High Court, 22nd November, 1983); *The State (Redmond) v. De Lappe* (Unreported, High Court, 31st July, 1984); *The State (Abenglen Properties Limited) v. Dublin Corporation* [1984] I.R. 384; and *The State (McInerney Company Limited) v. Dublin City Council* [1985] 1 I.R. 1).

21. In itself, this would preclude a judicial review being granted in this case. This was not a situation where questions might arise regarding the court's jurisdiction. Rather, the true issue raised was whether there was sufficient evidence. As a general rule, the High Court, and this Court, do not act as a court of appeal from other tribunals (*Lennon v. Clifford* [1996] 2 I.R. 590, at 593). While it can be said there were unusual aspects to the case, that is true of many cases.

22. In *appellate* procedures, insufficiency of evidence might well be a ground for reversing a decision of a court of first instance. But, save in the most extreme circumstances, insufficiency of evidence will not deprive a District judge of jurisdiction to reach a decision on the matter before him or her (see, *Roche v. District Judge Martin* [1993] I.L.R.M. 651 and *Graham v. Racing Board* (Unreported, High Court, 22nd November 1983)). This was not such a case.

Conclusion

23. McGovern J. made a number of observations in relation to the appellant. I confine myself only to observing that this application was misconceived.

24. As pointed out at para. 8 earlier, it must be remembered that justice delayed is justice denied. This case was permitted to remain in the lists for many years. It was brought to light only as a result of the actions of the Court itself in reviewing long outstanding cases. I would dismiss the appeal.