



THE COURT OF APPEAL

[184/18]

The President

McCarthy J.

Kennedy J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

VINCENT O'DONOGHUE

APPELLANT

JUDGMENT (Ex tempore) of the Court delivered on the 11th day of October 2019 by Birmingham P.

1. This is an application to extend time. The application is a highly unusual one. The background is that the appellant, on 27th February 2014, entered a plea of guilty to offences in the nature of fraudulent conversion. A trial date had been fixed at that point and the plea was entered at a pre-trial listing. Subsequently, on 29th July 2014, following a sentence hearing, the appellant was ordered to perform 220 hours community service as an alternative to a sentence of imprisonment. In seeking today to extend time for an appeal, he says that his mental and physical state in 2014 was such that it undermined the voluntariness of the guilty plea that he entered. He goes on to say that shortly after the entry of the plea and within the time for appealing, that he formed the intention to appeal, but that his ability to prosecute any appeal was hindered by his poor physical and mental health. It seems he is saying that the intention he formed was that he would appeal when his health improved to a level that would facilitate the conduct of the appeal.
2. In 2017, the appellant made contact with a firm of solicitors, apparently feeling well enough to prosecute an appeal at that stage, and documents were generated relating to the application to extend time, but at a later stage, the firm of solicitors in question indicated that they would be applying to come off record, they did come off record, and in March 2018, the appellant served a Notice of Discontinuance. One might have thought that that was the end of matters. However, he has had a change of mind, and now wishes to appeal. It must be appreciated that what he wants to do is, he wants to appeal against

his conviction, notwithstanding that it is a case where he entered a plea of guilty at a time when he was represented by a Solicitor and by Senior and Junior Counsel.

3. The background to the situation is to be found in offences, or alleged offences, which occurred in 1998 and 1999. Then, in 2002, the appellant emigrated to Australia, and between April 2009 and April 2013, he was imprisoned in Western Australia while he contested an extradition request. He returned to Ireland on foot of the extradition request, spent a period of time in custody, but was then admitted to bail. He entered his plea of guilty at a time when he was on bail.
4. Two medical reports have been included in the papers. One is from a General Practitioner in the medical practice where the appellant had attended, the actual doctor with whom he had direct contact appears to have sadly died. However, another doctor from the practice comments "On reflection, it is likely he was anxious and depressed and suffering from severe acute stress reaction at the time. This situation may have led to decisions being made in an effort to alleviate the pressure on him, which may have been made differently had he not been under such strain".
5. A report was also sought from a consultant psychiatrist by a new firm of solicitors that the appellant had instructed. The introduction to the report refers to the fact that the appellant pleaded guilty to offences in 2014 and that he wishes to appeal the subsequent conviction, but that a query arises from the legal point of view as to why he did not appeal the conviction in 2014. The report observes that a psychiatric report is requested as to any mitigating circumstances that may arise because of his mental health at the time.
6. The psychiatrist reported in late August 2019, and concluded his report by saying that the circumstances that the appellant endured between 2009 and 2013, it will be recalled that this was the period of incarceration in Australia, and his description of his symptoms after his return to Ireland led to the belief that he was suffering from symptoms of Post-Traumatic Stress Disorder at the time of the conviction and for some time after. The psychiatrist concludes his report by saying "Therefore, on the basis of the information available to me and on the balance of probabilities, I believe that Mr. O'Donoghue was not in a fit state to submit an appeal at the expected time". However, it has been made clear that there is no suggestion of an unfitness to plead, but rather, the suggestion is that his mental state was such that the plea was not free and voluntary.
7. Guidance has been provided by the Supreme Court in the case of DPP v. Kelly [1982] IR 90, the so-called Sallins train robbery case, as to how courts should deal with applications to extend time on the criminal side of the Court. The decision makes clear that a Court's approach must be flexible and that its discretion must be guided, not by any general test or criteria, but rather, by what appears to be just and equitable on the particular facts of the case in question.
8. While, at one level, the focus is on the fact that the appeal is out of time and that an extension is required, the more fundamental point in this case is that it is the situation

that a plea of guilty was entered at a time when he was represented by Solicitor, Junior and Senior Counsel. It is also the case that the appellant is a former solicitor himself, and so, was obviously in a position to assess the pros and cons of entering a plea of guilty. In recent days, the appellant has sworn a further supplemental affidavit, that is, I think, the fourth affidavit in the context of this application. That makes criticisms of someone identified in the affidavit as the complainant, though, in fact, it appears to be the situation that the person to whom reference is made is the spouse of one of the two injured parties referred to on the indictment. There is also criticism of the approach of the Gardaí to the investigation. However, neither that affidavit nor anything else advanced in the course of the documentation has convinced us that there is any point of real substance to be investigated at this late stage in the day.

9. Finality and certainty are important objectives in any area of litigation, including on the criminal side, and in the Court's view, it is clear that the interests of justice would not be served by permitting an extension of time to enter an appeal when the underlying objective would be to set aside a plea of guilty entered in 2014 in respect of events that occurred in 1998 and 1999.
10. The Court refuses the application to extend time.