

APPROVED

[2020] IEHC 463

THE HIGH COURT
JUDICIAL REVIEW

2020 No. 6 J.R.P.

BETWEEN

DERMOT O'CALLAGHAN

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

JUDGMENT of Mr. Justice Garrett Simons delivered on 12 October 2020

INTRODUCTION

1. This ruling is delivered in respect of an application for leave to apply for judicial review. The application has been made by way of a written application submitted to the court by a personal applicant. The applicant, Mr. O'Callaghan, is currently detained in Mountjoy Prison.
2. The applicant seeks leave to apply for judicial review in respect of his prosecution for offences said to arise out of an armed robbery committed at Ulster Bank, Stillorgan, County Dublin on 26 September 2017. The applicant has pleaded guilty to certain offences in this regard, and is scheduled to appear before the Circuit Court on 19 October 2020 for sentencing.

NO REDACTION REQUIRED

3. Before turning to discuss the grounds upon which the applicant challenges the process leading up to the scheduled sentencing hearing, it should be explained that the applicant is currently serving a term of imprisonment in respect of unrelated offences. More specifically, the applicant had been sentenced, on 19 November 2018, to a term of imprisonment for a period of eight years (with the final year suspended). No complaint is made in these judicial review proceedings as to this earlier conviction. (It seems that an appeal is pending before the Court of Appeal against that conviction).

TITLE OF PROCEEDINGS

4. The title of the proceedings has been amended so as to comply with the requirements of Order 84, rule 22(2A) of the Rules of the Superior Courts. The Director of Public Prosecutions has been named as respondent in lieu of the Circuit Court judge.

GROUND OF JUDICIAL REVIEW

5. The applicant had been charged with offences in respect of an armed robbery said to have been carried out at Ulster Bank, Stillorgan, County Dublin on 26 September 2017. The applicant had, initially, entered a plea of not guilty. The applicant and a number of co-accused were tried before the Circuit Court (Her Honour Judge Pauline Codd sitting with a jury) earlier this year. The applicant was represented by solicitor and junior and senior counsel.
6. During the course of the trial, it was indicated to the Circuit Court on 5 March 2020 that the Director of Public Prosecutions would be entering a *nolle prosequi* in respect of some of the charges against the applicant, and that the applicant

would be entering a guilty plea in respect of an existing count and a new count.

The applicant was formally arraigned on the new count, and entered a guilty plea.

7. The applicant subsequently sought to withdraw his guilty plea. It seems that this was refused by the Circuit Court, and the applicant has been remanded in custody pending a sentencing hearing on Monday next (19 October 2020).
8. The applicant's complaint is summarised as follows in his affidavit filed before the High Court on 2 October 2020 (at pages 3 and 4). (Syntax and spelling as per the original).

“The Applicant says and believes he pleaded guilty to an imitation firearm. The Applicant also says he was never sent forward for trial on an imitation firearm. The Applicant says and believes he is not in front of the Circuit Criminal Court in accordance with law.

The Applicant had a lapse of memory and rang his legal team and was told he pleaded guilty to possession of an imitation firearm. The Applicant informed his legal team he wanted to change his plea.

The Applicant's counsel told the judge the Applicant could not remember pleading guilty and wanted to change his plea. The judge stated the Applicant seemed in his right mind when he pleaded guilty. And she was not letting the Applicant change his plea. The Applicant's counsel informed the judge they were coming off record in the case. The judge granted the Applicant a different counsel and solicitor and remanded the case. The Applicant says the senior counsel in his trial was not the counsel he had appointed to represent him. And the Applicant says and believes the legal team did not act in the Applicant's interest.

The Applicant says and believes the action he took although it was silly was the only way the Applicant could be sure none of his jurors would be infected with C19.”

9. As appears, the applicant's principal complaint is that, having entered a plea of guilty in respect of the existing charge and the newly preferred charge, the applicant now wishes to change his plea. It seems that an application in this

regard was made before the Circuit Court and that the trial judge refused to accede to this application.

DISCUSSION AND DECISION

10. I have considered the transcript of the hearing before the Circuit Court on 5 March 2020, and, on the basis of same, am satisfied that the applicant is properly before the Circuit Court. It appears from the transcript that the applicant had been arraigned on an *additional* charge before the jury on 5 March 2020, and then pleaded guilty to that charge, and to one of the three charges which had initially been preferred. (The Director of Public Prosecutions entered a *nolle prosequi* in respect of the two remaining charges). It will also be recalled that the applicant had been represented by solicitor and junior and senior counsel.
11. In the circumstances, the Circuit Court has jurisdiction to deal with both charges, including the newly preferred charge. Any decision thereafter as to whether to allow the applicant to change his plea is a matter within the jurisdiction of the Circuit Court. There is, therefore, nothing in the papers filed by the applicant which discloses an arguable ground for judicial review.
12. The applicant has (new) legal representation before the Circuit Court and he may discuss with them the possibility of renewing his application to the Circuit Court to be allowed to change his plea. There is established case law which identifies the considerations which should inform a court's discretion to permit an accused to change their plea. (See, for example, the recent judgment of the Supreme Court in *E.R v. Director of Public Prosecutions* [2019] IESC 86). The applicant has a right of appeal to the Court of Appeal against a decision of the Circuit Court to refuse to allow him to change his plea and against any sentence imposed. This is

the appropriate procedure by which the complaints now made by the applicant should be pursued, rather than by way of judicial review. See *Freeman v. Director of Public Prosecutions* [2014] IEHC 68.

13. The High Court's supervisory jurisdiction by way of judicial review could only be exercised in circumstances where the Circuit Court did not have jurisdiction to entertain the matter, and a right of appeal to the Court of Appeal would not provide an adequate alternative remedy to judicial review. Neither of these contingencies are fulfilled on the facts.
14. Finally, whilst not determinative of the application, it is to be noted that the applicant is currently serving a term of imprisonment in respect of an *unrelated* conviction. Thus, irrespective of the outcome of these judicial review proceedings, the applicant would remain in custody. There is no prejudice caused to the applicant, therefore, in his having to pursue the conventional route of an appeal to the Court of Appeal against the orders of the Circuit Court, instead of judicial review.

FORM OF ORDER

15. The application for leave to apply for judicial review is refused. I direct that a copy of this ruling be provided to the Director of Public Prosecutions (via the Office of the Chief Prosecution Solicitor), and to relevant Circuit Court Office, in advance of the hearing on 19 October 2020.

Approved
GAMMA S.M.A.S