



THE COURT OF APPEAL

[112/2018]

**Edwards J.
Baker J.
Kennedy J.**

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND -

TIBOR HRICKO

APPLICANT

JUDGMENT of the Court (ex tempore) delivered on the 5th day of February 2019 by Ms. Justice Kennedy

1. This is an application to extend the time within which to appeal against the severity of sentence. The notice of application is dated the 19th October 2018 and filed on the 25th October 2018. It is important to know the background to the application and it concerns that fact that on the 28th June 2017, the applicant was sentenced to a period of imprisonment of eight years, the final twelve months of which were suspended, in respect of counts of defilement and five years imprisonment in respect of counts of sexual assault. The sentences were backdated to the 20th December 2016. There is somewhat of a history to the matter in that it appears that the applicant pleaded guilty on the 2nd June 2016 but he was permitted to change his plea to one of not guilty and ultimately, he was convicted by a jury on the 25th May 2017. It also transpires on foot of the affidavit filed that he has been in custody since the 20th November 2015.

2. An affidavit has been sworn by his solicitor, Mr Byrne, which is dated the 30th October 2018 and it refers to the matters that I have just outlined. It appears at para 5 of the affidavit, that on the 25th May 2017 there was no discussion regarding the applicant's sentence. On the 29th June 2017, the applicant was advised as to the merits of appealing conviction and sentence and he indicated at that point he did not wish to appeal either conviction or sentence. However, it seems he was unaware that his sentence had not been backdated to the date when he was lodged in custody, being the 20th November 2015.

3. On the 17th July 2017, when his solicitor consulted with the applicant whilst he was incarcerated, he became aware that the sentence had not been backdated to the date he had been lodged in custody and had been backdated to the 20th December 2016. He then instructed his solicitor that he had already attended with the Governor of the prison for the purpose of lodging his appeal.

4. On the 25th July 2017, the grounds of appeal were forwarded by his solicitor to the office of the Court of Appeal and it transpired that the notice of appeal had not in fact been lodged. So, they are the very particular circumstances which apply. So, in summary, the applicant seeks to appeal the severity of his sentence and he specifically seeks to have his sentence backdated to the date when he was initially lodged in custody. There are other grounds of appeal also set forward; namely, he contends that the judge erred in finding that he had breached conditions of his bail in circumstances where he says that he was first charged on the 20th November 2015.

5. In the particular circumstances, the position being that the applicant and his solicitor only became aware on the 20th March 2018 that the notice of appeal had not in fact been lodged and in circumstances where, on the 25th July 2017, a copy of the grounds of appeal had been forwarded to the Court of Appeal office and it appearing that there had been some error in that the notice of appeal had not been filed within time, notwithstanding that the applicant had formed the intention to appeal within the prescribed time period, we are satisfied that the interest of justice would be served by granting an extension of time and we will, in those circumstances, grant an extension of time taking into consideration the background facts and the merits of the application.