



**THE COURT OF APPEAL**

Neutral Citation Number: [2018] IECA 223

**[2017/219]**

**Birmingham P.  
Mahon J.  
Edwards J.**

**BETWEEN**

**THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS**

**AND**

**MICHAEL FAHY**

**RESPONDENT**

**AND**

**JUDGE JOHN LINDSAY**

**APPELLANT**

**RESPONDENT**

**JUDGMENT delivered on the 28th day of June 2018 by Birmingham P.**

1. This is an appeal from an order of High Court made on 24th April 2017 wherein Mr. Justice Noonan refused Mr. Fahy's ex parte application for leave to bring judicial review proceedings. The background to the application is that Mr. Fahy has been charged with six counts of failure to file tax returns for the years 2009 to 2015. A helpful chronology was prepared for the purpose of written submissions by the Director of Public Prosecutions. From that chronology, the following emerges:

- 22nd October 2014: summonses alleging offences were made returnable to Trim District Court. There was no evidence of service and no order was made.
- 7th May 2015: a fresh set of summons was made returnable to this date. The applicant appeared in person and indicated he was pleading not guilty. The case was adjourned.
- 23rd September 2015: the applicant sought a twelve-month adjournment of his case which was refused and a hearing date was fixed for the following January.
- 12th January 2016: the case was listed for trial in the District Court. The prosecution indicated that it would be relying solely on certificate evidence. The appellant indicated that he wished to cross-examine. Agreement was reached that an officer of the Revenue would make a statement.
- 25th January 2016: the case was before the District Court and was struck out.
- 24th June 2016: summonses were made returnable for this date. The judge in the District Court refused jurisdiction and the case was adjourned for service of a Book of Evidence.
- 16th September 2016: the Book of Evidence was served on the appellant and he was sent forward for trial.
- 17th November 2016: the case was listed before the Circuit Criminal Court in Trim. The applicant appeared and disputed the Court's jurisdiction, arguing that he had not been served with the Book of Evidence. The Court directed that the appellant be served with another copy of the Book of Evidence as a matter of courtesy.
- 24th April 2017: the appellant was refused leave to apply for judicial review by the trial judge. It is this refusal which is now the subject of the present appeal.
- 5th October 2017: the applicant, having appealed the refusal of leave, came before the Court of Appeal on foot of an application to join the Irish Human Rights and Equality Commission to the proceedings by way of amicus curiae. Having heard submissions, the Court refused the application.
- 15th December 2017: a hearing date was fixed for the appeal. The appellant indicated to the Court that he had not received service of the note of judgment and affidavit of the DPP by post. He declined to accept service of documentation in Court when this was offered.
- 19th February 2018: the appeal was listed for hearing. Mr. Fahy indicated that he was appealing the refusal to join the Irish Human Rights Commission to the Supreme Court and was not prepared to proceed with his substantive appeal. The Court indicated that in a situation where time had been set aside for the hearing of the appeal and where there were criminal charges pending, that it would hear the appeal but would not give judgment until the Supreme Court decided whether it would accept a further appeal. If the Supreme Court agreed to hear a further appeal, then the matter would be reheard before a differently-constituted panel. If, on the other hand, the Supreme Court refused leave to bring a further appeal to that Court, then the Court would proceed to deliver judgment.

- Mr. Fahy declined to make any submissions. The Court is, therefore, left simply with the Notice of Appeal along with such information as it has been able to glean from the exchanges in relation to the joining of the Irish Human Rights Commission.

- The Supreme Court has issued a determination declining to grant leave to appeal to that Court.

2. A number of legal areas were touched on in the course of the papers. The appellant contends that he may not have received full disclosure as described in the Prosecution Guidelines of the DPP. In the Court's view, the question of disclosure is a matter to be dealt with by the trial judge and is not a proper matter for judicial review.

3. The appellant has an issue with the suggestion that the State Solicitor for County Meath will be acting on behalf of the prosecution. He requires proof of the fact that the State Solicitor has been authorised to so act by the DPP. Section 4(3) of the Prosecution of Offences Act 1974 provides as follows:

"(3) The fact that a function of a law officer has been performed by him (whether it has been so performed personally or by virtue of subsection (1) of this section) may be established, without further proof in any proceedings by a statement of that fact made orally to the Court concerned by a person appearing on behalf of or prosecuting in the name of the law officer."

No proof is required of the fact that the State Solicitor prosecutes on behalf the DPP, and in any event, the matter is not one that is appropriate for judicial review.

4. The appellant has taken issue with the fact that there are no identified victims. It is sometimes the case that when crimes are committed that there are individual victims – assaults and sexual offences are obvious examples. On the other hand, some offences are committed against society as a whole – examples would include public order offences and certain offences under the Road Traffic Acts. Revenue offences involving failure to file returns fall into this category.

5. The applicant contends that the Book of Evidence was not served within the time prescribed and that this amounts to an unlawful act sufficient to ground his application for judicial review. Mr. Fahy fails, however, to appreciate that provision is made in statute for extensions of time *vis-a-vis* service. More fundamentally, a failure to adhere the 42-day time limit for service of the Book of Evidence does not invalidate the return for trial.

6. In the High Court, the trial judge commented:

"[I]t seems to me these are not matters really for judicial review and his criminal case is taking its course and matters in relation to the service of books of evidence and so forth are not matters for judicial review, but are matters within the province of the trial judge and the Court managing the criminal matter. So it seems to me that Mr. Fahy has not identified any arguable ground for the grant of leave in this case and I accordingly refuse the application."

The judge made the point that much of the focus of the proceedings is on an attempt by Mr. Fahy to seek clarity in relation to various points of law, and his criticism of a number of judges for not providing him with the clarity that he sought. The High Court judge also pointed out that the proceedings involved criticism of the Revenue Commissioners and An Garda Síochána, neither of which is a party to the proceedings.

7. In considering this appeal against refusal of leave, I begin by reminding myself that the threshold for granting leave is low. However, low as it is, in my view, the trial judge was, for the reasons I have already indicated, quite correct to take the view that no arguable ground for judicial review had been made out.

8. In those circumstances, I would dismiss the appeal.