Neutral Citation: [2015] IEHC 116

THE HIGH COURT

JUDICIAL REVIEW

[2014 No.708JR]

R. R. (A MINOR SUING BY HIS FATHER AND NEXT FRIEND S. R.)

APPLICANT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

HIS HONOUR JUDGE NOLAN

HER HONOUR JUDGE RING

THE JUDGES OF THE CIRCUIT COURT

RESPONDENTS

JUDGMENT of Kearns P. delivered on the 3rd day of March, 2015

This matter comes before the Court in circumstances where the first respondent has conceded to the grant of *certiorari* in respect of orders made by His Honour Judge Nolan and Her Honour Judge Ring on the 17th October, 2014 and 25th November, 2014 respectively. The parties are now in dispute as to whether the substantive criminal proceedings should be remitted to the Circuit Court for sentencing.

BACKGROUND

The applicant is a minor and is charged with two very serious robbery offences which occurred in April 2014. In one incident the applicant and his co-accused followed a disabled man on a bus from Dublin city centre to Booterstown. They then followed him from the bus stop before hitting him across the head and stealing his briefcase. In the second incident, the applicant and his co-accused lured a drunk and vulnerable man down a laneway in Dublin 2, knocked him unconscious and robbed him.

The offences were dealt with on indictment and were sent forward to Dublin Circuit Criminal Court. On the 17th October, 2014 the applicant pleaded guilty to both offences and was remanded by Judge Nolan in custody for sentence to 17th February, 2015. Judge Nolan also ordered the preparation of a Probation Services report. Neither the prosecution nor defence made any reference to the provisions of s.100 of the Children Act 2001 which only permits a remand of 28 days in custody with the possibility of a further extension of 14 days if the accused is admitted to bail.

The prosecution subsequently became aware of the provisions of s.100 and the matter was re-listed on the 24th November, 2014 when the prosecution sought and obtained, *ex parte*, an order for the production of the applicant on 25th November for the purposes of seeking to have the sentencing brought forward. On the 25th November, 2014 the prosecution applied to Judge Ring to vacate the order of Judge Nolan dated 17th October, 2014. At the request of the prosecution the applicant was remanded on bail to the 28th November, 2014 for sentencing and a Probation Services report was ordered. As it transpired, the applicant was already serving a sentence for another unrelated matter and could not be released until the following day when that sentence had expired.

The applicant subsequently instituted judicial review proceedings seeking to quash the order of Judge Nolan dated the 17th October, 2014 and the order of Judge Ring dated 25th November, 2014. The matter came before the High Court on the 26th November, 2014 and McDermott J. granted leave to the applicant to apply to quash the order of Judge Ring only. The first respondent does not oppose the quashing of both orders dated 17th October and 28th November. It therefore remains for this Court to consider whether or not the matter should be remitted to the Circuit Criminal Court for sentencing.

RELEVANT LEGISLATION

Part 9 of the Children Act 2001 ('the 2001 Act') relates to the powers of courts in relation to child offenders.

Section 98 concerns orders which may be made by the court on a finding of guilt. Section 99 allows the court, where it is satisfied with the guilt of a child, to adjourn the proceedings, remand the child, and request a probation and welfare officer to prepare a report in writing.

Section 100 is of particular significance in these proceedings and provides as follows -

> *"100.—(1) Where the court is satisfied of the guilt of a child, it may defer taking a decision to allow time for the preparation of any report requested pursuant to this Part or for other sufficient reason and for that purpose may remand the child on bail, subject to such conditions as it may think fit, or, pursuant to section 88 , in custody for, where appropriate, the minimum period necessary for the preparation of any such report but not in any case exceeding 28 days.*
>
> *(2) Notwithstanding subsection (1), where a child in respect of whom any such report is being prepared has been remanded on bail, the court may allow one extension of not more than 14 days for its preparation if satisfied, on application by the person preparing the report, that it is proper to do so.*
>
> *(3) Any person responsible for making any such report shall make all reasonable endeavours to ensure that the report is lodged with the court at least 4 working days before the end of the period of remand."*

The powers of the court on receipt of the report are set out in section 106 –

> *"106.—(1) Where the court has considered any report requested pursuant to this Part, it shall deal with the case in accordance with section 98 .*
>
> *(2) Before the court reaches a decision on the case, it may hear evidence from any person who prepared the report*

and from any person required under section 99 (5) to attend the proceedings.

(3) The court shall also give a parent or guardian of the child concerned (or, if the child is married, his or her spouse), if present in court for the proceedings, or in his or her absence an adult relative or other adult accompanying the child, an opportunity to give evidence.

(4) The court may, on consideration of a probation officer's report, request such other report or reports in writing, including medical, psychiatric or psychological reports, as would in its opinion assist it in dealing with the case.

(5) The principal probation and welfare officer shall arrange for the preparation of any such other report or reports, which shall contain information on such matters as may be prescribed and on any matter that may be specifically requested by the court.

SUBMISSIONS OF THE APPLICANT

Counsel on behalf of the applicant submits that the provisions of the 2001 Act, and s.100 in particular, are clear and unambiguous. It is submitted that the legislation makes clear that a sentencing decision in respect of a child may not be deferred for a period exceeding 28 days save in those circumstances set out in s.100(2). Judge Nolan was satisfied of the guilt of the present applicant on 17th October 2014 when he pleaded guilty to both offences and accordingly, counsel for the applicant submits that the jurisdiction of the Circuit Criminal Court to make a decision as to sentence in respect of the applicant was spent by the 28th November 2014. Therefore, in the event that the orders of the second and third respondents are quashed, the matter may not be remitted for sentencing at this stage.

Counsel contends that s.100 imposes an absolute time limit in respect of sentencing decisions and that while the section imposes rigorous requirements it exists to ensure that criminal cases involving children are dealt with as expeditiously as possible. It is submitted that the difficulties which have arisen in the present case are not due to any fault with the legislation, but rather due to the mutual inadvertence of the parties in failing to bring s.100 to the attention of the Circuit Court on 17th October 2014.

In interpreting the legislation, counsel states that the words must be given their literal meaning. In *Statutory Interpretation in Ireland* (Dodd, 2008) it is stated that –

> *"The intention of the legislature is primarily ascertained from the language or text chosen by the legislature to convey its intention. This is a fundamental rule often repeated in Irish case law."*

In *Howard v Commissioner for Public Works* [1994] 1 I.R. 101 Blayney J. quoted with approval the following passage from the speech of Lord Blackburn in *Direct United States Cable Co.v Ango-American Telegraph Co.* (1877) 2 App. Cas. 394 –

> *"The cardinal rule for the construction of Acts of Parliament is that they should be construed according to the intention expressed in the Acts themselves. If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound those words in their ordinary and natural sense. The words themselves alone do in such a case best declare the intention of the lawgiver."*

Counsel submits that the wording of s.100 is clear and unequivocal and there is no basis to depart from it. Therefore, as the time limit for sentencing the applicant as set out in s.100 has elapsed, the applicant can no longer be sentenced in respect of the offences.

If a purposive interpretation of the legislation is applied, the applicant submits that the purpose of the relevant provisions of the 2001 Act is to ensure an expedited criminal procedure in respect of children. In *Donoghue v DPP* [2014] IESC the Supreme Court, referring to the judgment of Quirke J. in *Jackson and Walsh v DPP* [2004] IEHC 380, stated –

> *"The observations of Quirke J. as to society's interest in the speedy prosecution of young offenders are well made and reflect the policy behind the Children Act 2001…"*

In *Jackson*, Quirke J had held that –

> *"It is no secret that persons in their late teenage years have particular vulnerabilities. These vulnerabilities can be compounded by difficult or deprived family or social circumstances and by a variety of other causes. The interests of the community will not be served by subjecting such persons to substantial delay in confronting them with complaints of criminal activity made against them.*
>
> *The interests of the community will surely be better served by efficient action on the part of the State authorities designed to ensure that young persons acquitted of criminal offences may be enabled to resume normal life and those convicted may be dealt with in such a manner as to reduce the risk to the community of further criminal activity…*
>
> *… I take the view that where a criminal offence is alleged to have been committed by a child or a young person there is always a special duty upon the State authorities (over and above its fundamental duty), to ensure a speedy trial of the child or young person in respect of the charges preferred."*

Counsel refers the Court to a number of other cases which it is submitted make clear that there is a statutory requirement for expedition when dealing with children. In *B.F. v Director of Public Prosecutions* [2001] 1 IR 656 Geoghegan J. held –

> *"I also take the view that in the case of a criminal offence alleged to have been committed by a child or young person as in this case, there is a special duty on the State authorities over and above the normal duty of expedition to ensure a speedy trial, having regard to the obvious sensitivities involved."*

Recently, in *G. v Director of Public Prosecutions* [2014] IEHC 33 O'Malley J. again reiterated the importance of a legislative and public policy whereby the criminal justice system has regard to the particular vulnerabilities and sensitivities of children.

The applicant further submits that it is the relevant court's satisfaction with the applicant's guilt that causes the time to run for the purposes of s.100 rather than the remand and therefore the first respondent's contention that sentencing can proceed if the orders are quashed cannot be correct. The Circuit Criminal Court was satisfied of the applicant's guilt on 17th October 2014 and would be

bound to make no order if the matter is remitted. The Court was further informed that if it declined the relief sought by the applicant (which, if such a course was to be adopted, would mean that the applicant would face no punishment for serious crimes to which he had pleaded guilty), a further application for judicial review would immediately follow. Therefore, the applicant contends that remitting the matter would be a waste of court time and resources and it should instead be dismissed.

SUBMISSIONS OF THE DPP
Counsel for the DPP accepts that the orders of the second and third respondents should be quashed and submits that what remains is a question of statutory interpretation as to whether or not the matter may now be remitted to the Circuit Criminal Court. It is submitted that another important consideration in this case is that, while it is accepted that the provisions of s.100 were not complied with, the applicant was already serving a sentence for an unrelated offence and did not spend any time in detention as a result of this oversight for which both parties are responsible.

Counsel for the first respondent submits that section 25 of the Courts (Supplemental Provisions) Act 1961 ('the 1961 Act') provides that the Circuit Court has full jurisdiction to sentence any person lawfully before it for any indictable offence (with the exclusion of certain specified offences) and subject to s.25(3). Section 25 provides as follows –

> *25.—(1) Subject to subsection (2) of this section, the Circuit Court shall have and may exercise every jurisdiction as respects indictable offences for the time being vested in the Central Criminal Court and every person lawfully brought before the Circuit Court in exercise of such jurisdiction may be indicted before and tried and, if convicted, sentenced by the Circuit Court accordingly.*

Counsel refers the Court to section 11 of the 1961 which states that the High Court shall be called the Central Criminal Court when it is exercising its criminal jurisdiction, while section 8 of the 1961 states that the jurisdiction of the High Court is that vested in it by the Constitution. It is submitted that it therefore follows, pursuant to s.25, that the Circuit Court has comprehensive powers to deal with any person lawfully before it and once a person has pleaded guilty the Circuit Court can bring the matter to a conclusion by imposing sentence in accordance with law. It is submitted that had it been the intention of the legislature to oust these broad powers or limit the jurisdiction of the Circuit Court, the provision would require very clear language to that effect.

Counsel submits that a reading of all of the relevant provisions of Part 9 of the 2001 Act makes clear that the limits set out in s.100 are not absolute and that s.100 does not extinguish the extensive powers of the Circuit Court to sentence a child if sentence is not concluded within 42 days of a plea of guilty being entered.

It is submitted that s.100 is intended to ensure that any probation report is prepared with due expedition and that sentencing is not unduly delayed by virtue of a delay in preparing the report. Counsel contends that the provision is silent on what should happen after 42 days have elapsed, but that when read in conjunction with s.106 it is clear that the legislation envisages situations whereby sentencing may be further delayed upon receipt of the probation report by the judge. For example, the judge may order the preparation of a more extensive report or the preparation of a medical or psychological report. In light of this, counsel contends that it would be absurd if s.100 was to be construed as imposing an absolute cut-off even where a Circuit Judge felt that there additional information was required that would assist him in formulating an appropriate sentence for a child.

In *Robert Allen v. Governor of St Patrick's Institution* (Unreported, High Court, 5th December, 2012) Finlay Geoghegan J. held that the provisions of s.99 of the 2001 Act were mandatory and the judge must order a probation report before imposing a sentence of detention on a child. However, if the applicant's interpretation of the legislation is correct, then, for whatever reason, should a report not be available to a judge within 42 days, the judge would be forced to impose sentence without the report. This would be inconsistent with the *Robert Allen* ruling and the child would also be deprived of the opportunity to engage with the Probation Services and possibly address the matters which led to their offending behaviour.

Counsel further submits that scenarios can easily be envisaged which, if the plaintiff is correct, would result in an absurdity. For example, if a Probation Report had been prepared and was available to the judge on the fortieth day after the applicant had pleaded guilty, but the applicant failed to appear in court and a bench warrant was issued, should the gardaí be unable to locate the applicant until after the forty-second day, the Circuit Court could no longer sentence the applicant for the offence. Counsel contends that this could not have been the intention of the legislature.

It is submitted that the only logical interpretation of s.100 is that it limits the length of the remand period to 28 days so that the judge is in a position to exercise a supervisory jurisdiction over the prompt preparation of the Probation report. Section 100(2) allows the person preparing the report to seek an extension of time for 14 days, after which, if the report is not ready, the person preparing the report is in breach of a court order. The first respondent contends that in such circumstances the judge must fall back on the powers conferred on him by the 1961 Act and do whatever is appropriate to ensure the child receives an appropriate sentence in accordance with law. The judge retains the power to adjourn the matter and remand the child until such time as the report becomes available or for any other reason.

It is submitted that the District and Circuit Court have all the ancillary and inherent powers to deal with a person who is lawfully before them and convicted of a criminal offence. In this regard, counsel relies on the decision of Finlay Geoghegan J. in *Stephens v. Governor of Castlerea Prison* [2002] IEHC 169 wherein it was stated that the District Court had an inherent jurisdiction to ensure that persons lawfully before it were dealt with in accordance with law. It is submitted that this applies *a fortiori* to the Circuit Court. Counsel refers the Court to similar findings in *Kiely v. Judge Ni Chonduin* [2008] IEHC 370 and *Brady v. Judge Fullam* [2010] IEHC 99 and submits that the Circuit Court continues to have the powers conferred on it by section 25 of the 1961 Act, including the power to remand a child on bail where the judge is not satisfied that he has sufficient information available to him to determine an appropriate sentence.

It is submitted that this matter should be concluded by quashing the orders of Judge Nolan and Judge Ring and remitting the matter to the Circuit Court where the applicant's guilty plea remains. The 28 day period as set out in s.100 would then recommence and the Circuit Court could order whatever reports it deems necessary in order to impose an appropriate sentence on the applicant.

DISCUSSION
The applicant pleaded guilty to two very serious offences on 17th October 2014. It is accepted that owing to inadvertence by both the prosecution and defence, the provisions of s.100 of the Children Act were not brought to the attention of the Circuit Court judge and the applicant was remanded for a period in excess of that allowed by the legislation. However, when the oversight was discovered the prosecution made an application to have this order vacated and to have the sentencing of the applicant brought forward. All of this occurred while the applicant was in custody for an unrelated offence and he therefore did not serve any additional time in detention as a result of error. The first respondent has conceded that the orders of Judge Nolan and Judge Ring should be

quashed. In those circumstances, this Court is required to consider if the Circuit Criminal Court is now precluded from imposing sentence on the applicant due to the provisions of the Children Act 2001 and, in particular, s.100.

It is clear from the long line of authority relied upon by counsel for the applicant that there is a special duty on state bodies to deal expeditiously with criminal cases against children and I am satisfied, having carefully considered the submissions of both parties, that s.100 of the Children Act 2001 is designed to ensure that a report from the Probation Services is made available to the sentencing judge in a timely manner so that the child in question does not suffer unduly from any avoidable delays in the sentencing process. It is imperative that, having regard to the particular vulnerabilities and sensitivities of minors and the difficulties they often experience in the criminal justice process, the courts and other relevant bodies such as the Probation Services act swiftly and efficiently in ensuring that criminal matters involving children are disposed of appropriately and without delay. S.100 of the 2001 Act is an important provision in terms of ensuring that this occurs.

However, it is clear from a reading of Part 9 of the Act as a whole that the time limits set out in s.100 are not absolute and that, owing to the nature of criminal litigation, situations whereby the sentencing judge may not be in a position to determine the appropriate sentence within the forty-two days referred to are contemplated by the legislature. Such circumstances obviously do not excuse mere inactivity or sluggishness on the part of relevant bodies but equally an interpretation which would permit persons awaiting sentence to thwart and obfuscate the report process by delaying it would be an absurd interpretation of the Act. The Court is satisfied that some exceptional circumstances come within the contemplation of the 2001 Act.

In particular, s.106 allows the court, having considered a report ordered pursuant to s.100, which may only have been received by the judge on the forty-first day, for example, to order a more extensive Probation report or to order medical and psychological reports. The court is also permitted to call evidence from the parent or guardian of the child and from those who prepared the reports. For various reasons, it may not be possible for all of this to occur within the forty-two day period. In my view it is not realistic to suggest that the intention of the legislature was that the sentencing judge must proceed to hastily determine sentence within forty-two days, even in circumstances where he or she is not satisfied that as much relevant evidence as possible is available to assist the court, or else be precluded from imposing sentence at all. Not only would such a scenario fail to have regard to the sometimes unavoidable delays and complexities of a particular case, it would also risk denying a child the benefits of a more appropriate and more carefully considered and fully informed sentence.

Furthermore, the Court accepts the submissions of counsel for the first respondent that had the legislature intended for s.100 to oust or limit the jurisdiction of the Circuit Court as set out in the Courts Supplemental Provisions Act 1961, the relevant provisions would have contained clear language to this effect. Even where a person directed by the court to produce a report pursuant to s.100 fails to do so within the specified time limits and is in breach of that court order, the court retains its power to remand a child on bail in circumstances where it is not satisfied that there is sufficient information available to determine an appropriate sentence.

It is accepted between the parties that the order of the second and third respondents should be quashed. In those circumstances the applicant's guilty plea remains and the Court is of the view that the matter should be remitted to the Circuit Criminal Court for sentencing. The provisions of the Children Act 2001 apply and, for the purposes of s.100, the clock begins to run from the date of remittal.

Even if I am wrong in this interpretation of the Act, the Circuit Court retains its power to start afresh from the point of the entry of the plea of guilty and to remand the applicant on bail pending sentence.

As already stated, there is a special onus on the State to deal with cases involving children as expeditiously as possible. However, certain rare occasions may arise where the court is required to go beyond the time limit set out in s.100 of the 2001 Act. I am satisfied in all the circumstances of this case, having regard to the nature of the delay, the reasons for the delay, and the fact that the applicant spent no additional time in detention as a result of the delay, that this is one such case.

DECISION

In light of the foregoing, I would quash the orders of the second and third respondents and remit the matter to the Circuit Criminal Court for sentencing. In conclusion, the Court deprecates an approach to proceedings which suggests, effectively *in terrorem*, that if the Court declines to grant the relief sought and instead remits the matter to the sentencing court, that a further application by way of judicial review will follow. While that right may be exercised, it will be incumbent upon the applicant to make the court aware at the *ex parte* stage of this decision and judgment.