

THE HIGH COURT

Record No. 2005 No. 1017 JR

BETWEEN

AARON DOYLE

APPLICANT

AND
THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

Judgment of Mr. Justice de Valera delivered on the 6th day of July 2006.

1. This is an application for an injunction by way of judicial review to restrain the respondent from proceeding against the applicant on foot of offences committed on the 6th August, 2003.

2. It is the applicant's contention that he is entitled to restrain the Director of Public Prosecutions from proceeding on grounds of delay which delay he contends will prevent the applicant from obtaining a fair trial.

3. The relevant chronology is as follows:

6th August, 2003:	The date of the offence and the date on which the applicant was first arrested.
8th August, 2003:	The applicant's first appearance before the District Court.
14th August, 2003:	The applicant is remanded in custody.
28th August, 2003:	The applicant is further remanded in custody.
11th September, 2003:	Jurisdiction declined by the District Court.
9th October, 2003:	Proceedings struck out in the District Court the book of evidence not being ready.
January, 2004:	Consideration of the matter by the Gardaí and further enquiries directed.
5th March, 2004:	The applicant is sentenced and committed to prison on other charges.
28th April, 2004:	The applicant states that he wrote to Gardaí.
4th May, 2004:	Applicant states that he wrote to Gardaí and Garda Keane acknowledges receipt.
3rd June, 2004:	The applicant states that he wrote to the Gardaí seeking to be recharged immediately.
6th June, 2004:	The applicant writes to the Director of Public Prosecutions.
8th June, 2004:	The Director of Public Prosecutions acknowledges applicant's letter.
June 2004:	The file is transferred by the Gardaí, internally.
24th June, 2004:	The Director of Public Prosecutions writes to applicant.
15th July, 2004:	The case file from Gardaí received by the Office of the Director of Public Prosecutions.
29th July, 2004:	The applicant again writes to the Director of Public Prosecutions.
1st August, 2004:	The applicant writes to the Gardaí.
6th August, 2004:	The Director of Public Prosecutions writes to applicant.
12th August, 2004:	The Director of Public Prosecutions issues directions to the Gardaí and also notifies this to the applicant.
1st September, 2004:	Gardaí are informed that further proofs are required.
1st October, 2004:	The applicant states that he wrote to Gardaí.
2nd January, 2005:	The applicant states that he wrote to Gardaí.
4th March, 2005:	Garda report involving additional proofs as directed is completed.
10th March, 2005:	Updated Garda report is forwarded to the chief prosecution solicitor.
21st March, 2005:	Additional directions sought.
31st March, 2005:	A direction is issued to recharge the applicant.
5th June, 2005:	The applicant writes to the Director of Public Prosecutions.
14th June, 2005:	The Director of Public Prosecutions replies to the applicant.
27th June, 2005:	Draft charges prepared.
20th July, 2005:	The applicant is recharged.
21st September, 2005:	The applicant obtains leave to seek judicial review.

4. It has been submitted to me by the respondent, and I accept, that this overall period from the 6th August, 2003, to the 20th July, 2005, can be reduced to four discrete periods.

Firstly, August, 2003, to June, 2004: This period included the investigation by the Gardaí of what was a very serious crime including the location and interviewing of witnesses and the obtaining of technical evidence by Garda experts.

Secondly, June, 2004, to 12th August, 2004: This period included the referral of the Garda file to the Director of Public Prosecution's Office, its consideration and, ultimately, directions from that office to the Gardaí.

Thirdly, August, 2004, to March, 2005: This period included further investigations by the Gardaí following directions from the Director of Public Prosecutions Office involving, *inter alia*, the taking of additional statements.

Finally March, 2005 to July, 2005: This period included the preparation of a new book of evidence, its service and the

recharging of the applicant.

5. It is well settled law that an accused is entitled to "an expeditious trial as a positive constitutional right" (Finlay C.J., *Hogan v. The President of the Circuit Court* [1994] 2 I.R. 513). In *P.C. v. The Director of Public Prosecutions* [1999] 2 I.R. 25

6. Keane J. states at p. 65:

"The right of an accused person to a reasonably expeditious trial has been recognised as an essential feature of the Anglo American system of criminal justice for many centuries."

7. The concept of his speedy, or expeditious, trial comes to be considered as part of an accused's entitlement to a fair trial; this is the fundamental test *O'Flynn v. Clifford* [1988] I.R. 740.

8. In applications such as this where the applicant is seeking to restrain, in this case the Director of Public Prosecutions, from proceeding against him it is for the applicant to satisfy this court that he could not obtain a fair trial: Finlay C.J., *Z. v. D.P.P.* [1994] 2 ILRM 481 at 498.

9. Each case must be judged on its own particular circumstances: Walsh J., *Hannigan v. Clifford* [1990] ILRM 65 at 68.

10. In the instant case the delay period is between 6th August, 2003 and the 20th July, 2005 – just over two years. This, as a period of delay, does not appear to be what might be termed gross delay but in circumstances where the law is clear that an accused has a constitutional right to an expeditious trial the circumstances must be reviewed. Often in delay cases (and these appear to account for a large proportion of judicial review applications) the delay is either unexplained, or insufficiently explained. This is not the situation here. The first of the four periods of purported delay is, I accept, satisfactorily explained. It must be remembered that the applicant is charged with a very serious crime and though caught "red handed" (to use the phrase adopted in his own counsels submissions) and having made inculpatory admissions there is no suggestion, anywhere, that he intended to plead guilty to the offences with which he was being charged or to do other than exercise his constitutional right to put the State on proof of his alleged guilt. In these circumstances it would have been a serious dereliction of duty if the relevant authorities did not take every appropriate step to evaluate and collect all the evidence they considered necessary to produce at the applicant's trial.

11. It is properly part of the prosecution process that the Gardaí will liaise, and seek direction from the Director of Public Prosecutions whose officers must carefully evaluate and consider such information as is submitted to them by the Gardaí. In these circumstances, the second period of purported delay, of approximately two months cannot be considered excessive.

12. The third period August, 2004, to March, 2005, is again taken up by further Garda investigations following on instructions from the Director of Public Prosecutions Office and is apparently reasonable – certainly the applicant has not discharged the onus of showing it to be unreasonable and I am satisfied that it is within a reasonable time frame for the investigations required.

13. March, 2005, to July, 2005, a period of about 4 months appears to have been taken up with the preparation of a new book of evidence, the framing of new charges and the recharging of the applicant. This could not be described as particularly expeditious but applying what has been described as the "balancing test" laid down by Murphy J. in *The State (O'Connell) v. Fawsitt* [1986] I.R. 362, the test is whether "reasonable expedition" is achieved and I am satisfied that it was.

14. I am therefore satisfied that the apparent delay in this matter, when reviewed in the light of the particular circumstances of this individual case, would not result in the applicant failing to obtain a fair trial. Although I have considered this matter on the basis of the applicant's right to an expeditious trial without reference to the question of actual prejudice I am satisfied that there is no actual prejudice to the applicant on the basis of the evidence adduced herein.

15. I therefore refuse this application.