

**THE HIGH COURT
JUDICIAL REVIEW**

[2002 No 604 J.R]

BETWEEN

ANTHONY GROGAN

APPLICANT

AND

THE JUDGES OF THE CIRCUIT CRIMINAL COURT

FIRST NAMED RESPONDENT

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

SECOND NAMED RESPONDENT

Judgment of Mr. Justice Barry White delivered on the 28th day of July 2006. The Applicant seeks

- (1) An Order of Prohibition prohibiting the respondents and each of them, from proceeding with his prosecution in respect of several offences alleged to have occurred in association with a robbery that occurred at Dublin on 29th day of October 1999. which offences are the subject matter of the counts set out and contained in Bill Number 815/012 of the County and City of Dublin, and further, or in the alternative, seeks
 - (2) An injunction by way of an application for judicial review restraining the respondents, and each of them, from proceeding with the said prosecution on foot of the said Courts.
1. On 7th day of October, 2002, the applicant was granted leave by the Court (Mr. Justice Kearns) to apply, inter alia, for the said reliefs on the grounds set out in paragraph D(ix) of the grounds upon which relief was been sought herein.

The Background facts

2. The applicant was arrested on 25th day of November 1999, pursuant to the provisions of s. 30 of the Offences Against the State Act, 1939, as amended, on suspicion of having committed a Schedule Offence under that Act, namely the unlawful possession of firearms at Dublin Airport on 29th October 1999, an armed robbery having taken place at the Bank of Ireland's branch at the airport on that date. Whilst detained pursuant to the provisions of that Act, the applicant was interviewed in respect of the events that occurred at Dublin Airport, and was further interviewed in respect of an armed robbery that had occurred in Kilkenny on 14th October 1999. Notwithstanding that he had allegedly made admissions in respect of both robberies, he was released without charge.
3. The applicant subsequently left the jurisdiction and went to the United Kingdom. There he was convicted of attempting to handle stolen goods, namely traveller's cheques part of the proceeds of the said robbery at Dublin Airport, and, on 13th April 2000, he was sentenced to three months in prison in respect of that offence.
4. Subsequently, on 14th April 2000, the applicant was extradited back to this jurisdiction, two separate warrants having been obtained on 11th February 2000, and 14th March

2000, respectively, in respect of offences other than those allegedly committed at Dublin Airport and Kilkenny, namely an armed robbery that occurred on 25th March 1999, and a murder alleged to have occurred on 13th June 1999.

5. Neither extradition warrant referred to the robbery at Dublin Airport. No mention was ever made thereto in the course of the extradition proceedings in the United Kingdom, and the applicant did not contest his Extradition on foot of the said warrants.
6. On his return to this Jurisdiction the applicant was initially remanded in custody, and, subsequently on 9th May 2000, the applicant pleaded guilty to the robbery offence the subject matter of his extradition warrant. He was further remanded in custody to 13th February 2001, whereupon he received a five year term of imprisonment which was backdated to 18th April 2000. The murder charge was listed for hearing in or about the month of June 2001, and the second named respondents entered a nolle prosequi in respect of the matter.
7. On 28th July 2002 the applicant was charged in respect of the robbery alleged to have occurred on 29th October 1999 at Dublin Airport, and was returned for trial to the then next sittings of the Dublin Circuit Criminal Court on Bill of Indictment Number 815/02.
8. Subsequently, on 20th August 2002, the applicant was charged with a number of offences in relation to an alleged robbery on 14th October 1999, in Kilkenny, and, on the 3rd September 2002, was returned for trial to the next sittings at the Circuit Criminal Court on Bill of Indictment KK 17/02.
9. On 7th October 2002, the applicant sought leave to apply for judicial review in respect of both prosecutions and was so granted leave by Mr. Justice Kearns.
10. The respondents did not show cause in respect of the Kilkenny Bill of Indictment, and, on 15th January 2003, the applicant was granted relief (Mr. Justice Ó Caoimh) in respect thereof.
11. The second named respondent has filed a statement of opposition herein resisting the application.

The applicant's submission and arguments

12. It was submitted that the prosecutorial delay herein is inordinate, inexcusable and remains wholly unexplained by the second named respondent. The proposed evidence against the applicant in an alleged admission which was within the possession of the second named respondent since November 1999, and further, at the time of the obtaining of the warrants for the applicant's extradition, such information was available to the second named respondent. It is further submitted that the failure on the part of the second named respondent, his servants or agents, to extradite the applicant in respect of all outstanding charges has effectively deceived both the applicant and British Authorities, and this has contravened the principles of fundamental fairness coupled with the applicant's rights to due process and expedition.

13. Under these circumstances the applicant seeks an order of prohibition, and, in addition, an order by way of an injunction restraining his prosecution in respect of the various alleged charges contained within Bill of Indictment 815/02.

The second named respondent's submission and arguments

14. It was argued by the second named respondent that relief should not be granted herein, as he had obtained, on 15th July 2002, a certificate of waiver of speciality from the Government of the United Kingdom, thereby permitting of the said prosecution, and that any delay herein was firstly the result of matters outside his control, and secondly the result of the matter being complicated and, in the circumstances, any delay herein was excusable.

Findings

15. In the present instance, the applicant was detained, and interviewed by An Garda Síochána, within five weeks of the armed robbery having been committed. In the course of his detention he allegedly freely and voluntarily made admissions of guilt. Notwithstanding these admissions, he was released without charge and a file was submitted by An Garda Síochána to the second named respondent. Thereafter, notwithstanding that the applicant had been within the jurisdiction since 14th April 2000, it took the second named respondent until 28th July 2002, to prefer charges against him.
16. John Murphy, special legal officer in the office of the second named respondent, deposes, in his affidavit, to correspondence and queries passing between the office of the second named respondent and the Garda Síochána, and the office of the second named respondent and the office of the Chief State Solicitor, but this correspondence is not exhibited.
17. He further deposes to difficulties that were encountered with obtaining the certificate of waiver from the Government of the United Kingdom, but again correspondence in respect thereof is not exhibited.
18. From Mr. Murphy's affidavit, it is apparent that the first approach to the Government of the United Kingdom, for the certificate of waiver was not made until 5th October 2001, almost eighteen months after the applicants return to this jurisdiction.
19. Mr. Murphy deposes to the fact that the preparation of charges against the applicant was a complicated matter, arising from the nature of the offences, and from the fact that the investigation involved three other suspects. He accepts that there was certain delay in obtaining the certificate of waiver after the initial request therefore, but contends that this was something that was outside the control of the second named respondent.
20. I find no reality in the submission that this was a complex matter. It was a straightforward armed robbery in respect of which the applicant had allegedly made admissions. The initiation of his prosecution did not, in my consideration, have to await the outcome of the Garda Síochána investigation into his co suspects.

21. I find that there had been unacceptable prosecutorial delay in the matter; it was both excessive and inexcusable. If there was delay on the part of the United Kingdom Authorities, such delay was clearly apparent to the second named respondent, and he should have been more diligent in pursuing the request for the certificate of waiver herein.

22. The applicant has, in my view been deprived of a trial with reasonable expedition.

23. In *B.F. v. The Director of Public Prosecutions* [2001] 1 I.R. 656 Geoghegan J. at 665 concluded:

“I take the view that when there is a culpable delay on the part of the State Authorities, their having regard to all the circumstances of the case, the delay itself may entitle the accused to an order preventing his trial irrespective of whether there is actual or presumed prejudice.”

24. I consider this to be such a case. I consider that having regard to the fact the applicants prosecution for the Dublin Airport robbery was clearly under active consideration prior to the extradition application, there may well be prejudice to the applicant, both in the failure of the second named respondent to seek his extradition in respect of the Dublin Airport robbery, and in the failure to prefer charges in respect thereof, prior to his plea of guilty to the robbery charges upon which he had been extradited, in that he may well have contested his extradition, albeit maybe unsuccessfully, but it is not inconceivable that he will have received substantially the same sentence on a plea to both robbery offences, if they had been proffered at the same time.

25. However, irrespective of whether or not there has been actual or presumed prejudice herein, as I have already said I consider the delay herein to be such as to entitle the applicant to an order of prohibition in all the circumstances of the case.

26. I consider the approach adopted by the second named respondent to the Kilkenny charges to have been right and proper, and I consider that he ought to have adopted a similar approach herein, and thereby been consistent in his approach to the applicant's application. In each case, the applicant had allegedly confessed to the offence, and in each case, the case would appear to have been a straightforward armed robbery

27. Such order will issue as against the second named respondent and no order will issue against the first named respondent.