

**THE HIGH COURT****JUDICIAL REVIEW****[ 2004 No. 588 J.R.]****BETWEEN****JOHN WHITE****APPLICANT****AND****DIRECTOR OF PUBLIC PROSECUTIONS, THE CIRCUIT****JUDGE OF THE NORTHERN CIRCUIT, IRELAND AND****ATTORNEY GENERAL****RESPONDENTS****Judgment of Mr. Justice de Valera delivered on the 3rd day of March, 2006.**

1. The applicant in this matter is a member of An Garda Síochána who is charged with having in his possession a double barrelled shotgun, make unknown, serial number: 45434 in such circumstances as to give rise to a reasonable inference that he did not have it in his possession for a lawful purpose on or about the 22nd May, 1998.
2. The applicant has brought these proceedings, *inter alia*, to prohibit the Director of Public Prosecutions from prosecuting, or continuing to prosecute, the applicant in respect of this charge.
3. On the 12th July, 2004, the applicant sought, and was granted, leave to seek judicial review of the Director's decision to prosecute him: and the respondents on the 22nd October, 2004, filed a statement of opposition grounded upon an affidavit from Clare Galligan which purports to ground a notice of motion seeking to set aside the leave to seek judicial review. No copy of this notice of motion appears on the papers before me but it has been agreed between the parties that the application for prohibition and the application to set aside the leave granted be heard together in these proceedings.
4. The chronology of the various steps in this matter which have occurred to date are of significance and the dates are as follows:-

22nd May, 1998	the date of the alleged offence
1st November, 2001	the matter comes before the District Court
6th December, 2001	the applicant is returned for trial (for the first time)
21st January, 2002	an application is made to transfer the matter to Dublin and this application is refused
8th May, 2002	application is made to the Circuit judge in respect of missing evidence and the judge rules that it is a matter for the trial judge
12th June, 2002	the case is listed for trial but adjourned to allow consideration of the Supreme Court's decision in the "Zamora" case
24th October, 2002	the first return for trial is quashed and the matter remitted to the District Court
19th December, 2002	the matter is listed again in the District Court
26th June, 2003	the applicant is again (for the second time) returned for trial
12th September, 2003	the applicant by letter seeks "discovery" of items arising from the Book of Evidence
6th November, 2003	the applicant seeks production of a holdall, clothes and cartridges, items associated with the firearm in the Book of Evidence
26th April 2004	applicant seeks by letter to the DPP a nolle prosequi as a result of the prosecution's inability to provide the holdall, clothes and cartridges and indicates that an order for prohibition will be sought if necessary
12th July, 2004	an application for leave to seek a judicial review is brought
20th July, 2004	the matter was scheduled to appear in the List to Fix Dates

5. The applicant in submissions on his behalf suggests that there are, in effect, two principal issues to be decided by me in this matter. The first of these issues is the question of the missing evidence in relation to the proposed trial of the applicant and the second is the delay alleged by the first respondent in seeking judicial review and I accept these as being the kernel of the matter. On behalf of the respondents, it has also been suggested that matters of significance were not placed before the High Court in the leave application. I am satisfied that this is so. It is clear that material matters were not disclosed to the learned High Court judge and that this is unfortunate and verging on the unacceptable but it is impossible on a consideration only of the affidavits (and no cross examination of the deponents was sought by either side) to attribute *mala fides* to any party. Clearly the application to the learned Circuit Court judge on the 8th May, 2002, was of particular significance but I propose to deal with this aspect of the matter under the heading of delay.

**Delay**

6. The Rules of the Superior Courts at Order 84, r. 21(1) state that applications for judicial review must be brought promptly, and in any event, within three months from the date when the grounds for the application first arose.

7. I accept that the evidence in this case establishes that the date when the grounds first arose in this matter was, at the latest, the 8th May, 2002. This was the date on which an application in respect of the missing items was made to the learned Circuit Court judge and I am satisfied on the balance of probabilities as established by the affidavits sworn herein that the application would not have been made if the applicant's advisors were not at that time satisfied, and accepted, that the missing items would not be

forthcoming and could not be produced.

8. As already indicated the judicial review proceedings were not commenced until 12th July, 2004, two years and two months later. It is stating the obvious to point out that this is considerably in excess of the period of three months provided for in the Rules and that this time limit can only be over-ridden if "the Court considers that there is good reason for extending the period within which the application shall be made".

9. The applicant contends that, because the first return for trial was quashed (on 24th October, 2002), and the second return for trial did not take place until 26th June, 2003, that the relevant period of time should run from the day on which the applicant's advisors claims that they became aware of the unavailability of the items in question, i.e. the 18th May, 2004.

10. Even if I accepted that the quashing of the first return for trial and the subsequent second return for trial amounted to a new and fresh commencement of proceedings (and for the purposes of my decision herein, I am making no finding on this point) I am satisfied, for the reasons stated above that the applicant's advisors were aware on the 8th May, 2002, that the items sought could not be produced and that, therefore, the grounds for this application were known to them on the 26th June, 2003, also and any application for judicial review should have been made within three months of that date, i.e. on or before the 26th September, 2003.

11. I do not consider that there is any good reason for extending the time for making such application beyond that date.

#### **The missing items**

12. In these circumstances, where I am refusing the application on the grounds of delay it is not necessary for me to address the matter of the missing evidence. I should point out however that nothing in my decision herein prevents the applicant from making such submissions as might be deemed appropriate to the judge at the trial of the charge against him in respect of the missing evidence.