Neutral Citation Number: [2008] IEHC 152

THE HIGH COURT
JUDICIAL REVIEW

2008 no.567 JR

BETWEEN

ALEX HARRIS

APPLICANT

AND
HER HONOUR JUDGE DELAHUNT
AND
THE GOVERNOR OF MOUNTJOY PRISON

RESPONDENTS

Judgment of Mr. Justice Charleton delivered on 28th May, 2008

1. This is a personal application for judicial review, or for an enquiry under Article 40.4.1 of the Constitution into the lawfulness of the detention of the applicant. In accordance with the direction of the Supreme Court, I am delivering a brief written ruling on this matter and judgment is being delivered in open court.

2. The applicant came before Her Honour Judge Delahunt, the first named respondent, on 16th June, 2006, on 9th November, 2006, and on 9th March, 2007. Sentence was pronounced on 1st November, 2007. It is the sentencing structure which gives rise to a complaint from the applicant, who is currently a prisoner in Mountjoy Prison. The sentences were pronounced on 1st November, 2007, in respect of four different bills. They are Bill No. DU 00630/2006, Bill No. DU 00846/2006, Bill No. DU 00272/2007 and Bill No. DU 00287/2007.

3. The sentencing structure is complex. I am satisfied, however, that it is valid. Further, it was clearly entered into by Her Honour Judge Delahunt for the purpose of finding a just sentence in respect of the crimes of the applicant which would, at the same time, offer him the prospect of rehabilitation within the context of appropriate punishment. The applicant pleaded guilty, to his credit, to all that follows.

4. On Bill DU 00630/2006, there were two counts on the indictment and both were of robbery contrary to s.14 of the Criminal Justice (Theft and Fraud Offences) Act 2001. On each of these, the warrant records that the applicant was imprisoned for three years, sentences to run concurrently, and to date from 23rd June, 2006. Orders were made for the forfeiture and destruction of imitation firearms and for the restitution of a sum of cash seized. On Bill No. DU 00846/2006, there was one offence in the indictment, that of robbery, with the same statement of offence as previously. The sentence here was one of five years imprisonment to date from the lawful termination of the sentence imposed on the previous bill, but with the final two years of that sentence suspended. An order was made for the forfeiture and destruction of a handgun and knife and restitution was also ordered. On Bill DU 00272/2007, there was a count of attempted robbery, contrary to common law. The sentence here was to imprison the applicant for a period of three years on that count, which sentence was to date from the lawful termination of the sentence imposed in respect of the previous bill. On Bill DU 00287/2007, there were twelve counts in the indictment in respect of which sentences were imposed on a count of robbery, on a count of unlawfully using a mechanically propelled vehicle, on a count of dangerous driving, and on a count of assault or obstruction of a police officer. All of the statements of offence are set out in the relevant documents and are, to my mind, correct. On this bill, the most substantial sentence was on count 1, that of robbery, where the applicant received a sentence of three years. On the count of unlawfully using a mechanically propelled vehicle, the sentence was six months and on the count of dangerous driving the sentence was twelve months. These sentences were concurrent and were to date from the lawful termination of the sentence imposed in respect of the previous bill. The court also took into consideration nine other counts on the indictment.

5. As I understand it, the prison authorities work out the appropriate sentence in the following way. First of all, the initial sentence is calculated in terms of its duration minus 25%, which is currently the statutory remission of sentence for good behaviour. This is translated into days. Then the second sentence, to date from the lawful termination of that first sentence, on the second warrant, is again translated into days using the 25% discount. This is added to the first sentence. The third and fourth sentences will have a similar exercise applied to them. When a portion of a sentence is suspended, this is simply removed for the purpose of calculating the appropriate sentence, which is the actual time to be served minus 25% for good conduct. Bad conduct by a prisoner can result in the loss of remission. The suspended portions of the sentence are to be served in the community and are not, of course, subject to remission for good behaviour as prisoners on suspended sentences are subject to recall in the event of a breach of a bond to behave lawfully. These suspended portions are easily calculated on the basis of the date of release from imprisonment in respect of the sentences to which they apply.

6. I am satisfied that the form of the sentence on the first bill and warrant are in order. The form of expression is not in any way defective.

7. It follows, in respect of the second indictment and warrant, that there is no necessity to strike it down, as the applicant contends, because the first indictment and warrant are correct. The same principle applies to the third and fourth indictments and warrants.

8. All offences which are attempted, or in respect of which there is an agreement to commit them, occur contrary to common law. In addition to that, some statutes specify forms of attempts within the meaning of the statute. It can happen that a specific sentence for attempt or conspiracy or incitement is contained within a statute. Where this occurs, there cannot be a sentence outside the statutory limit. Where an offence is charged contrary to common law, it would be improper for a sentencing judge to exceed the statutory limit that would apply had the offence been charged contrary to the statute. Nothing done by the learned first named respondent in this case infringed that principle.

9. The manner of calculating the sentence is for the prison authorities. There is nothing to indicate to me that the appropriate calculation has not been arrived at in accordance with the mathematical formula set out in this judgment. The applicant is in the lawful custody of the second named respondent on the papers before me.

10. The application is therefore dismissed.