

THE HIGH COURT

2007 No. 1369 J.R.

BETWEEN

PAMELA BIRD

APPLICANT

AND

JUDGE BRADY, JUDGE OF THE DISTRICT COURT AND THE DIRECTOR
OF PUBLIC PROSECUTIONS

RESPONDENTS

Judgment of Mr. Justice John Hedigan delivered on the 11th day of June, 2008.

1. This case was heard together with the above case of Gerard Neeson because essentially the same issues arise. Herein, the charge involved the theft of food and clothing to the value of €70.00. The facts are different in the following ways. Three days after the decision of the District Court Judge in this matter, the applicant in the District Court received from another District Court Judge a custodial sentence of nine months in relation to a separate conviction for theft. She further received a six months suspended sentence in the Dublin Circuit Criminal Court four weeks later in another matter. On both occasions she had the benefit of legal aid. This was not known nor brought to the attention of the Judge herein when he dealt with the application for legal aid. Secondly, there was some confusion as to whether the presenting Garda thought she was "at risk". The evidence as presented by the applicant herein is accepted by the respondent and consequently I proceed on the basis that the Garda in question had always expressed the view that the applicant was "at risk". I reiterate what I have decided in the *Neeson* case. Applying the same principles here, it appears to me that it might well be a case in which a renewal of the application might be considered. Were the District Court Judge to be apprised of information concerning the applicant's numerous other convictions and two subsequent sentences, then he would, absent a plea of guilty, be obliged to recuse himself. That should not, however, present any insuperable difficulty as the case could be readily transferred to another District Court Judge in those circumstances. In the event that such a renewed application failed and the applicant did receive a custodial sentence, then it might well precipitate a more appropriate resort to the High Court than the two applications dealt with today.

2. Legal aid is not available in respect of all offences charged; *inter alia*, the District Court Judge must look to the gravity of the same. If, in his or her opinion, the offences charged are ones not likely to result in a custodial sentence, then he or she is entitled to refuse legal aid. The role of the prosecution, if asked, is to express an opinion as to the risk of imprisonment in any given case. The role of the Judge is to decide whether to accept or reject the view of the prosecution. In deciding on this issue, the District Court Judge will draw upon his or her knowledge and experience as to how such charges transpire within their jurisdiction, and if the Judge takes the view they are not likely to result in a custodial sentence, then he or she is entitled to refuse an application for a legal aid certificate. For these reasons I refuse the reliefs sought in this case as well.