

THE HIGH COURT

Judicial Review

2009 972 JR

BETWEEN

PATRICK McCANN

APPLICANT

AND

THE GOVERNOR OF MOUNTJOY PRISON

AND THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENTS

JUDGMENT of Mr. Justice John Edwards delivered on 25th day of September, 2009.

The applicant is a prisoner in Mountjoy Prison where he has been serving sentences with a combined total of eighteen months in respect of four convictions as follows: viz. 6 months for an offence of causing criminal damage to a patio window; a further 4 months consecutive to that for burglary of a premises at 90 Sundrive Road, Crumlin, Dublin 12; yet another 4 months consecutive to that for burglary of a premises at 9 Slievenamon Road, Drimnagh, Dublin 12, and a final 4 months consecutive to that for an offence of theft. The warrants in respect of all four convictions have been exhibited before me and are dated 31 October 2008. On the assumption that these warrants were executed on that date, or very shortly thereafter, the applicant has now been in prison for just short of 11 months, and assuming entitlement to normal remission of 25% could expect to be released after 13½ months which will be some time around mid December 2009.

The documentation lodged with the Court consists of a "Statement Required to Ground Application for Judicial Review By a Personal Applicant" and a short affidavit sworn on the 19th of September, 2009. In the first of these documents the applicant seeks "Mandamus" and does so "to stop a reactivation of a previous sentence". The Court interprets this as referring to an attempt by the prosecuting authorities to have him now serve another sentence of imprisonment previously imposed upon him but which was suspended on the usual conditions, viz that he should enter into a bond, and undertake, to keep the peace and be of good behaviour. It is presumably being alleged that by committing the offences for which he is now in prison he breached his bond and his undertaking.

The accompanying affidavit states "This matter has prevented T/R and has stopped me attending college" The Court does not understand the reference to "college". Perhaps he means college. At any rate he continues, "I have copy warrant. Drug Free, No P. 19, was passed for temporary release etc. To tell me of a reactivation at this stage is justice delayed. Seeking a Gary Doyle Order, to see exactly where I stand."

If the Court correctly understands the position the suspended sentence has not been reactivated yet. Rather, the applicant has merely been appraised of an intention on the part of the DPP to seek to have it reactivated.

Clearly, he should be looking for *certiorari* and/or an injunction rather than *mandamus*, but because he is a lay litigant I am prepared to overlook the procedural error and to treat his application as being in effect one for leave to apply for *certiorari* of the DPP's decision to seek to have him serve a sentence previously suspended and/or an injunction prohibiting the taking of any steps by the DPP in furtherance of that decision. I cannot see that he has any possible case against the Governor of Mountjoy Prison who must, as a matter of law, act on foot of any lawful committal warrant directed to him.

As a matter of general principle the DPP is, in the normal course of events, entitled to seek to have a suspended sentence reactivated where he has information that the conditions of suspension have been breached. In those circumstances his role is to have the matter re-entered promptly before the sentencing Court for the purpose of asking the Court to certify a breach of the defendant's bond and undertaking, and of further asking the Court to order the defendant to serve the sentence previously suspended. In this case the applicant complains that the DPP has not acted promptly and has been guilty of undue delay, as a result of which he is now unfairly prejudiced. I take it to be his contention that if the DPP had acted sooner it is likely that he would have been afforded the opportunity of serving any reactivated sentence concurrently with the series of consecutive sentences that he is now serving. I think he has raised an arguable point and in the circumstances I am disposed to grant him leave to apply for *certiorari* and/or an injunction by way of judicial review with a view to (i) quashing the DPP's decision to seek to have him serve a sentence previously suspended, and (ii) restraining the DPP from taking any further steps in that regard, on the grounds of excessive and inordinate delay giving rise to unfair prejudice to the applicant.

I will grant the applicant a recommendation under the Attorney General's scheme so that he may instruct a Solicitor and one Counsel to represent him. I will fix the 19th of October 2009 as the return date in the first instance and will ask my registrar to forward a copy of this judgment to the Chief Prosecution Solicitor on behalf of the DPP and, as a matter of courtesy, also to the Chief State Solicitor on behalf of the Governor of Mountjoy Prison. A formal order will be perfected in due course and furnished to the applicant who should then arrange for it to be served formally on the Chief Prosecution Solicitor at 90 North King Street, Smithfield, Dublin 7, together with copies of his "Statement Required to Ground Application for Judicial Review By a Personal Applicant" and his affidavit sworn on the 19th of September, 2009.

Unless and/or until the applicant has instructed a legal team he is hereby granted liberty to apply in writing to the High

Court, and on at least four days notice to the Governor of Mountjoy Prison, for a production order if he wishes to be personally in attendance on the 19th of October. However, once he has instructed a solicitor (assuming he is willing to do so) the solicitor must thereafter make applications of that sort, or any other necessary applications, in the normal way.