THE HIGH COURT

JUDICIAL REVIEW

[2014 No. 59 J.R.]

BETWEEN

EDDIE KERSHAW

APPLICANT

AND

DISTRICT JUDGE JOHN COUGHLAN, DISTRICT JUDGE ANN WATKIN

RESPONDENTS

AND

THE DIRECTOR OF PUBLIC PROSECUTIONS

Notice Party

JUDGMENT of Mr. Justice Meenan delivered on the 20th day of December, 2017.

Background:
1. The applicant in these proceedings describes himself as an artist and human rights defender. In his role as "human rights defender", the applicant mounted a legal challenge against the statutory requirement to wear a seatbelt whilst driving a mechanically propelled vehicle. The basis for this challenge was, in the applicant's words:-

> "I do not wear my safety belt because I need to be able to get out of my car quick enough to defend myself against abusive (gardaí) or get away from them"

2. The legal challenge commenced by way of an ex parte application for judicial review which was granted in July 2008. The applicant sought the following orders:-

> (i) A declaration that s. 3 of the Road Traffic Act, 2002 (relating to disqualification by reason of accumulation of 12 penalty points) is unconstitutional and contrary to the European Convention on Human Rights.
>
> (ii) Orders of prohibition restraining District Judge John Lindsay and the Director of Public Prosecutions from proceeding with prosecutions against him on certain "failure to wear a seatbelt" charges until his constitutional challenge has been decided.
>
> (iii) By way of an amended statement of grounds, dated 8th July, 2008, the applicant sought a further declaration that Article 6(2) of the Road Traffic (Construction Equipment and use of Vehicles)(Amended) (No. 3) Regulations 1991(S. I. 359/1991) is unconstitutional.

3. By notice of motion dated 14th October, 2008 the respondents in those judicial review proceedings applied to the High Court to have the order granting leave set aside pursuant to the inherent jurisdiction of the Court. In giving judgment, Hedigan J. stated that the law on seatbelts and the penalty point system were there for the protection of the public and that although it does constitute an infringement on personal liberty same is a necessary and proportionate one, made for a legitimate purpose and clearly provided for by law.

4. In the notice of appeal to the Supreme Court, dated 9th March, 2009, the appellant applied for an order discharging said judgment and order of Hedigan J.

5. On 26th April, 2013 the applicant applied to the Supreme Court by way of notice of motion seeking a stay on certain prosecutions and summonses for failure to wear a safety belt, as well as a stay on the execution of certain convictions until the determination of his appeal against the order of Hedigan J.

6. The order of the Supreme Court, dated 26th April, 2013, states:-

> "the motion on the part of the applicant in person pursuant to notice of motion herein dated 8th April, 2013, for a stay pending appeal on the judgment and order of the High Court (Mr. Justice Hedigan) given, on 9th February, 2009, coming on for hearing this day and upon reading said motion and the affidavit of Eddie Kershaw, filed on 9th April, 2013 and upon hearing the applicant in person and counsel, the respondent it is ordered that the said application be refused…"

7. In a judgment of the Supreme Court delivered 21st June, 2016, McKechnie J. dismissed the applicant's appeal against the judgment and order of Hedigan J.

8. On 31st October, 2013 the applicant was convicted of a number of offences, some fourteen relating to the failure to wear a seatbelt, one offence for failing to produce insurance and one offence of parking on double yellow lines.

9. On 16th January, 2014 there were some 13 more convictions against the applicant for failing to wear a seatbelt.

Judicial review proceedings:
10. By order of this Court, 10th February, 2014, the applicant was granted leave to apply for an order of *certiorari* to quash the first named respondent's orders of 31st October, 2013 (the "31st October, 2013 convictions") and the second named respondent's orders of 16th January, 2014 (the "16th January, 2014 convictions").

11. In his statement of grounds in respect of the 31st October, 2013 the applicant maintains that the first named respondent erred in law in proceeding to convict the applicant on the basis of a plea of guilty in circumstances where the applicant states that he made

no such plea. The applicant also relies on the ground of delay taking into account the time it took to prosecute his appeal in the Supreme Court. Finally, the applicant relied on what he characterised as unfair procedures on the part of the first named respondent at the hearing.

12. In respect of the 16th January, 2014 convictions the applicant maintains that the second named respondent in proceeding to conviction had been, according to the applicant, wrongly informed that the appeal in the earlier judicial review proceedings had been determined by the Supreme Court. The applicant also relied upon delay as he did in contesting the validity of the 31st October, 2013 convictions. The applicant criticised the second named respondent for unduly intervening in the course of the hearing and failing to allow the applicant to conduct his case with "dignity and propriety".

13. The applicant maintained that the January 2014 convictions were infirm in that there was an alleged failure to give a warning or any adequate warning to the effect that a failure to comply with the fixed charge penalty notice would be an offence. It is also alleged that his right to a fair trial was violated by reason of, what he termed, false evidence given by a member of an Garda Síochána at the sentence hearing.

Application for leave to amend statement of grounds:
14. At the hearing the applicant sought leave to amend the statement of grounds in these judicial review proceedings. The applicant, who appeared in person, relied upon his own affidavit, which was both lengthy and detailed. However, it was clear that much of what was stated in that affidavit related to events in 2014 thus making the application out of time. Further, the applicant contested that the transcript of proceedings provided to him in respect of the October 2013 hearing and January 2014 hearing were inaccurate and failed to record all the proceedings. Having heard the submissions of the applicant on this and reviewed the transcripts I am satisfied that these transcripts are an accurate record of the hearings in question. I, therefore, refuse the application to amend the statement of grounds.

The 31st October, 2013 convictions:
15. On that date, the first named respondent convicted the applicant in respect of some 16 charges. At the hearing before me, the notice party indicated that, as per para. 5 of the statement of opposition, that it was not in a position to evidentially support an objection to the reliefs sought by the applicant in respect of two of the convictions on this date.

16. In dealing with the submission by the applicant that the first named respondent proceeded to convict on the basis of guilty pleas which he contests, I have looked in detail at the transcript of this hearing. The prosecuting solicitor indicates that on a pervious date the applicant had pleaded guilty and that a plea of guilty was marked on the top of those summonses. The transcript records the applicant as now not pleading guilty:-

> " Judge: ok, are you pleading guilty?
>
> Mr. Kershaw: no, judge. "

17. There then followed arguments concerning the ongoing appeal before the Supreme Court and the delay.

18. Later in the transcript the following exchange takes place:-

> "Judge: in relation to failing to wear a seatbelt, Garda O'Brien, €100 fine, five months, five days; ok now, because there is a plea on that. Now, the next one is?
>
> Solicitor: Turn number 3 Judge, Garda Reynolds, there was a plea of guilty –
>
> Mr. Kershaw: I did not plead guilty.
>
> Solicitor: entered on that as well Judge…"

19. Having reviewed the transcript, it appears to me that although the applicant may have entered a guilty plea in respect of the charges on a pervious occasion, it is clear that at the hearing of 31st October, 2013 the applicant was no longer pleading guilty. The first named respondent does not appear to have recognised this and proceeded to convict the applicant on the basis of a guilty plea. This clearly amounted to a want of fair procedure and thus the applicant is entitled to an order of *certiorari* quashing these convictions.

The 16th January, 2014 convictions:
20. On 16th January, 2014 the applicant appeared before the second named respondent charged with some thirteen charges of failing to wear a seatbelt.

21. The applicant's complaint against the second named respondent was that she proceeded to hear these charges despite a pending challenge before the Supreme Court of the legislation giving rise to these charges. The Court has been furnished with a transcript of the hearing.

22. It is clear from the transcript that the Court was aware of the pending appeal in the Supreme Court. However, the second named respondent, having regard to the order of the Supreme Court refusing to stay proceedings, proceeded to hear the charges. In my view she was entitled to do so. It also follows that there was no basis to the allegation that a Garda gave false or misleading evidence as to the status of the then pending appeal.

23. In the course of the hearing of the charges, the applicant, as in accordance with law, was afforded the opportunity to cross-examine witnesses called by the notice party.

24. As to the criticism that the second named respondent excessively intervened in the course of the hearing this is not borne out by the transcript. Having reviewed the transcript, I am satisfied that the second named respondent conducted the hearing in accordance with law and that the applicant was, at all stages, afforded fair procedures.

25. When it came to the sentencing part of the hearing it is clear from the transcript that the second named respondent correctly received evidence of previous convictions. Although the Court was incorrectly informed that the applicant had four previous convictions for no insurance, it is clear from the transcript that this was corrected:-

"Garda Finnerty: Judge, 4 -- on the 4th of – sorry, judge, on 4th March, 2010, for failing to produce an insurance policy. My apologies, judge, it wasn't insurance, it was failure to produce an insurance policy…"

and

"Judge: so you told me for no insurance;

Garda Finnerty: my apologies judge;

Judge: And there is just two now, that is a serious thing to do;

Garda Finnerty: my apologies, judge, yes;

Judge: its as well he challenged them;

Garda Finnerty: yes, judge, my apologies…"

It is clear that there was no injustice done to the applicant in this regard.

26. As to the applicant's submission that the prosecution failed to give a warning or any adequate warning to the effect that a failure to comply with the fixed charge penalty notice would be an offence. Such a warning was contained in the fixed penalty notice given to the applicant and such was found by the second named respondent.

Conclusion:
27. By reason of the forgoing:-

(i) The applicant is entitled to an order of *certiorari* quashing the first named respondent's orders of 31st October, 2013 in Court 26 of the Chancery Courts, Chancery Street, Dublin 7.

(ii) The applicant is refused an order of *certiorari* quashing the second named respondent's orders of 16th January, 2014 in Court 17 of the Criminal Courts of Justice, Dublin. 7.