



THE COURT OF APPEAL

[88/2018]

The President

Edwards J.

Whelan J.

IN THE MATTER OF AN APPLICATION FOR ENLARGEMENT OF TIME WITHIN WHICH TO APPEAL

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

RAY FINLAY

APPELLANT

JUDGMENT (Ex tempore) of the Court delivered on the 5th day of November 2018 by Birmingham P.

1. This is an application seeking to enlarge the time within which to appeal against the severity of sentence.
2. The sentences sought to be appealed were imposed on 11th November 2016 in the Central Criminal Court. The combined or aggregate sentence was one of 14 years and was imposed in respect of three counts of rape where each count related to a different complainant and injured party. The appellant had entered pleas of guilty to three counts of rape – vaginal rape – four counts of sexual assault and, in the case of one complainant, one count of s. 4 rape or anal rape.
3. The application to extend time is grounded on an affidavit of the would-be appellant of 26th January 2018. While the affidavit was sworn in January 2018 and there is a notice of appeal of the same day, the notice of application to extend time is dated 22nd March 2018.
4. The basis on which the appellant says time should be extended is set out at paras. 10 and 11 where he says:

"Subsequent to this sentence being imposed, I discussed the consequences thereof with my legal advisers, including Senior Counsel and Junior Counsel. I say that I was advised my options in respect of the sentence imposed included:

- (a) accepting the sentence and serving it accordingly or
- (b) appealing against the severity of sentence.

In that regard, it was explained that I could lodge a Notice of Appeal from prison or I could instruct my solicitor to do so on my behalf. There was further explained to your deponent that any appeal must be lodged within 28 days of 11th November 2016. Your deponent formed the view that it would be desirable to lodge an appeal within the aforementioned 28-day period. I formed this view on foot of legal advice received in the aftermath of the sentence hearing on 11th November 2016 and having given consideration to the advice received thereafter. However, having received such a lengthy sentence, I did not process this advice appropriately in the immediate aftermath thereof. I did feel capable of dealing with these matters. In these circumstances, I did not take the necessary steps to act on the advice received. Furthermore, having entered a guilty plea in respect of the matters forming the subject matter of these proceedings, a part of me simply wished to put matters behind me and complete my sentence. With the passage of time, I have given the advice received renewed consideration and regret not issuing an appeal within the prescribed time period. I believe that the learned sentencing Judge imposed a sentence that was excessive and I see to appeal the severity thereof."

5. The principles that should apply when the question of an extension of time is under consideration were discussed by the Supreme Court in the case of DPP [v. Nicky Kelly] [1982] IR, a case arising from the Sallins train robbery. The Court of Criminal Appeal had applied the test laid down in *Eire Continental Trading Company v. Clonmel Foods* [1955] IR, but the Supreme Court said that in considering whether to grant an application for enlargement of time on the criminal side, a Court must be guided by what is required by the justice of the case. It should exercise its powers flexibly, unrestricted and unhampered by any consideration other than that which is required by the justice of the particular case in which the application is made.

6. In this case, the Court has not been persuaded that the interests of justice would be served by extending time. There are a number of factors that require to be considered. This was a case where there were three complainants and where the offending took

place over a prolonged period of in excess of 13 years, the offending having occurred between 1st July 1989 and 31st August 2002. Much time has passed since the offending occurred. The interests of each of the complainants fall to be considered. There has been a very significant delay in advancing the appeal. A sentence was imposed on 11th November 2016, but the notice of application to the Court was dated 22nd March 2018 with the notice of appeal and the grounding affidavit dated 26th January 2018. The notice of application, therefore, is some 17 months later or some 16 months out of time.

7. In the Court's view, there is a very strong public interest in bringing finality to criminal procedures. The victims are entitled to closure. Reopening the case by allowing an appeal way out of time would deny the victims the closure to which they are entitled. The point has been made by the applicant that there is no attempt to appeal against conviction and that, therefore, the role of the injured parties in a sentence appeal, if one was permitted, would be very limited. The point is made that it is recognised that even if an appeal is successful, the applicant would still be left to serve a very substantial sentence and it is suggested that that should offer some comfort to the complainants. The Court does accept that additional and different considerations would apply if an appeal against conviction was proposed, but even in relation to sentence, there must come a time when victims are entitled to get on with their lives, or, to use the language of the appellant, a stage at which they are entitled to put matters behind them.

8. The merits of the proposed appeal are also a matter to be considered. This aspect is dealt with in the notice of application as follows:

"The appellant believes that the learned sentencing Judge imposed a sentence that was excessive and seeks to appeal the severity thereof."

In the course of the notice of appeal, there is a reference to a failure to construct a sentence that was proportionate.

9. If it was the case that the sentence imposed appeared, even on the basis of very limited information, to be one that departed very significantly from the sentence that was to be expected, then that would be a factor to which the Court would be entitled to have regard and it would be a factor that would militate in favour of extending time. However, that is not the situation here. The available information suggests that this was offending of the utmost seriousness involving three complainants, involving very protracted offending over many years and that against a background of a very significant breach of trust. Apart from the comment that the appellant believes his sentence was too severe and the observation or contention that the Judge failed to construct a sentence which adhered to the principles of proportionality, no discrete ground has been identified. Apart from the somewhat formulaic statements referred to, the appellant has not sought to point to any specific error by the trial Judge either at the stage of assessing gravity or at adjusting the sentence identified as a headline or starting sentence for mitigation.

10. Every management list in this Court involves a number of applications to extend time. Often, the extension sought is short, measured in days, but sometimes longer, measured in weeks and even months. Frequently, these applications are not the subject of controversy, the respondent confining herself to observing "that is a matter for the Court". Where, however, the appeal is long out of time and a very substantial extension is sought and the extension is opposed, it will be incumbent on an applicant to put before the Court information which it can be argued outweighs the public interest in finality and closure for victims.

11. In the Court's view, in this case, no real basis for the Court exercising its jurisdiction in favour of the appellant has been identified. In those circumstances, the interests of justice are served by having regard to the public interest in finality and the public interest in allowing and maintaining closure for victims. The Court is in no doubt in the present case that the interests of justice would not be served by acceding to the application.

12. The application is refused.