

THE HIGH COURT

JUDICIAL REVIEW

[2015 No. 470 J.R.]

BETWEEN

SHANE COFFEY

APPLICANT

AND

A JUDGE OF THE DISTRICT COURT

FIRST RESPONDENT

AND

THE MINISTER FOR JUSTICE AND EQUALITY

SECOND RESPONDENT

JUDGMENT of Mr. Justice Meenan delivered on the 9th day of February, 2018.**Background:**

1. On 18th April, 2015 the applicant was charged by Garda Colin Hampson at Store Street District Garda Station in respect of two offences alleged to have occurred at a Londis shop on Store Street, Dublin 1, on charge sheet numbers, 15642852 (assault) and 15642845 (breach of the peace) (hereinafter "the Garda Hampson Charges").

2. On 27th April, 2015 the applicant's solicitor, Mr. Aonghus McCarthy, appeared on behalf of the applicant in respect of the Garda Hampson Charges. There was no appearance by the accused, so a bench warrant was issued for his arrest.

3. On the same day, 27th April, 2015, the applicant was charged by Garda Jason Reilly of Clontarf Garda Station in respect of two offences. Firstly, in respect of alleged theft at a Spar Shop on Vernon Avenue, Clontarf, charge sheet number 15673017 and, secondly, in respect of his failure to appear before the court earlier that same day, charge sheet number 156730182 (hereinafter "the Garda Reilly Charges"). The accused was held overnight and appeared before the District Court on 28th April, 2015.

4. On his appearance in court on 28th April, 2015 bail was granted to the applicant on all charges, subject to conditions. The applicant was remanded to appear again on 26th May, 2015. Counsel who appeared for the applicant applied for a Legal Aid (District Court) Certificate, which was granted.

5. The Legal Aid Certificate issued on 28th April, 2015 specified three charge sheets. These charges consisted of the Garda Hampson Charges (save for the breach of the peace charge) and the Garda Reilly Charges.

6. The applicant's solicitor received a copy of said Legal Aid Certificate in advance of the applicant's return date, it being 26th May, 2015. On that date, the solicitor for the applicant made an application for a new certificate in respect of the Garda Reilly charges. However, the first named respondent informed him that he had already received a signed certificate in relation to these matters. The solicitor for the applicant informed the first named respondent that the certificate he had received was, as stated at para.10 of his affidavit:-

"assigned in respect of Garda Hampson's prosecutions and purported to also cover Garda Reilly's, despite the prosecutions relating to different offences allegedly committed on different dates..."

7. Having heard this submission, the first named respondent remarked that he thought "one certificate is enough". In response, the solicitor for the applicant reiterated his submission that the appropriate procedure would be to assign two separate certificates on the basis that there were two separate and unrelated prosecutions, arising out of different incidents, on different dates and prosecuted by separate gardai.

8. The applicant argues that if the prosecutions had been brought separately, before individual District Courts, and the applicant had satisfied the statutory requirements for the granting of a Legal Aid Certificate, then there would have been separate certificates granted in respect of the Garda Hampson Charges and the Garda Reilly Charges. Further, the applicant maintains that if he had requested a different solicitor to deal with the Garda Reilly Charges a certificate would have had to be granted to that solicitor.

Reliefs sought:

9. The applicant seeks an order of *certiorari* quashing the refusal of the first named respondent to grant a separate Legal Aid (District Court) Certificate on case no. 2015/76868, this being a separate prosecution commenced by Garda Reilly.

10. In the statement of grounds, the applicant maintains that the first named respondent acted unreasonably and irrationally by refusing to grant a Legal Aid (District Court) Certificate in circumstances where he had been informed by the solicitor for the applicant that the statutory criteria for granting a certificate had been satisfied. Further, the applicant maintains that the first named respondent essentially "extended" the Legal Aid Certificate to cover the separate prosecution by Garda Reilly which is a tacit acknowledgment that the applicant had satisfied the criteria set out in s. 2 of the Criminal Justice (Legal Aid) Act 1962 for the granting of a new certificate.

Submissions of the applicant:

11. The applicant relies on the provisions of s. 2 of the Criminal Justice (Legal Aid) Act 1962, as amended by s.6 of the Criminal Justice (Miscellaneous Provisions) Act 1997 which states that:-

"2(1) if it appears to the District Court before which a person is charged with an offence or an alternative court within the meaning of section 5 of the Criminal Justice (Miscellaneous Provisions) Act 1997, before which a person is appearing

1. that the means of the person before it are insufficient to enable him to obtain legal aid, and

2. that by reason of the gravity of the offence with which he is charged or of exceptional circumstances it is essential in the interests of justice that he should have legal aid in the preparation and conduct of his defence before it,

the said District Court or the alternative court, as may be appropriate, shall, on application being made to it in that behalf, grant a certificate, in respect of him, for free legal aid (in this Act referred to as legal aid (District Court) certificate and thereupon he shall be entitled to such aid and to have a solicitor... for that purpose”.

12. Therefore, once the application for a Legal Aid Certificate is made, and the court is satisfied that the statutory requirements have been met, a Legal Aid Certificate must be granted.

13. The applicant submits that the Legal Aid Certificate which was granted in respect of the Garda Hampson Charges was, in effect, “extended” to cover an entirely separate prosecution of the Garda Reilly Charges.

14. The applicant stated that he was not looking for a “second” certificate in relation to the same prosecution, what he was looking for was a Legal Aid Certificate to be granted in respect of the Garda Reilly Charges which were a separate and distinct prosecution which, of themselves, required the professional services of the applicant’s solicitor.

15. The applicant’s solicitor made it clear that he was not trying to “recover more fees” but was simply asking the court to cover the costs of defending the applicant in respect of the Garda Reilly Charges which would not have been covered by the Legal Aid Certificate granted. Consequently, it was submitted that the applicant was being denied the Legal Aid to which he was entitled.

16. The second named respondent (who was substituted as respondent for the Director of Public Prosecutions in circumstances where the second named respondent is the *legitimus contradictor* in respect of the matter at issue in these proceedings concerning the administration of the Criminal Legal Aid Scheme) submits that when the matter came before the first named respondent on 26th May, 2015 the charges in question were already the subject of an existing Legal Aid Certificate which had been made by Judge Faughnan on 28th April, 2015. On that date, counsel for the applicant had made an application for Legal Aid in respect of matters that were being dealt with by the court, which included both the Garda Hampson Charges and the Garda Reilly Charges.

17. The second named respondent submits that the District Judge had no statutory or common law jurisdiction to grant a “separate” or a “second” Legal Aid (District Court) Certificate on 26th May, 2015 in respect of matters which were already the subject of an existing Legal Aid Certificate, granted pursuant to an order previously made by the District Court on 28th April, 2015, in respect of the proceedings before the court on that date.

18. The second named respondent maintains that the application before this Court seeking to quash the refusal of the first named respondent to grant a separate Legal Aid Certificate on 26th May, 2015 is, in effect, a collateral attack on the decision of the District Court to grant a single Legal Aid Certificate on 28th April, 2015, which is impermissible and, in any event, out of time.

19. The second named respondent further submits that at no stage was the applicant prejudiced during the course of the District Court proceedings by reason of the refusal of the first named respondent to issue a “separate/second” Legal Aid Certificate. In any event, the applicant pleaded guilty to both charges thereby making the issue in these proceedings “moot”.

Consideration of submissions:

20. The relevant statutory provision is s. 2 of the 1962 Act, which is set out at para. 11 above.

21. Other than Regulation 7(4) of the Criminal Justice (Legal Aid) Regulations 1965, which provides that where two or more certificates for Legal Aid are granted to a person and the cases in relation to which they are granted are heard together, or in immediate succession, only one certificate may be given unless the court otherwise directs, there appears to be no statutory provisions or Regulations which would permit a District Judge to “extend” or grant a “separate/second” Legal Aid Certificate.

22. The crucial fact in these proceedings is that on 28th April, 2015, both the Garda Hampson Charges and the Garda Reilly Charges were before the District Court and the District Judge granted one Legal Aid Certificate in respect of both sets of proceedings. When the matter came before the first named respondent there were no new charges. In these circumstances the applicant was facing charges that were already subject to an existing Legal Aid Certificate.

23. In the course of submissions, both parties referred to *Miroslav Horvath v. District Judge Bryan Smith and Another* [2015] IEHC 16. This case concerned an application brought on behalf of the applicant to quash the decision of the District Judge to refuse to issue a separate Legal Aid Certificate in respect of a number of separate charges prosecuted by a particular garda. The respondent judge instead decided to “extend” an existing Legal Aid (District Court) Certificate. The Legal Aid Certificate had been granted in separate prosecutions, involving different offences, dates and prosecutors. In this case, the applicant submitted that once an application for a Legal Aid Certificate is made, and the Court is satisfied that the statutory requirements under s. 2 of the 1962 Act have been met, a Legal Aid Certificate must be granted. The applicant further argued that the concept of an “extension” of a Legal Aid Certificate was one unknown in law. Therefore, the issue in the Horvath case was whether, in circumstances where a Legal Aid Certificate had already been granted in respect of specific charges, it was permissible for a District Judge to “extend” the certificate to cover further charges. The Court considered the relevant statutory provisions and the Regulations made thereunder. In the course of his judgment, Kearns P. stated:-

“29. It seems to this Court that the appropriate course for the District Judge to have adopted was to grant a legal aid certificate in respect of the second set of offences, whereupon an application could have been made under the regulations that the ‘unless’ clause applied and that in the particular circumstances arising there was good reason for the Court to take the view that the particular case was not one for deeming two or more certificates to be treated as one only. Any decision on such an application would have to be rationally based and factually sustainable. However, that option was foreclosed by the District Judge’s decision to ‘extend’ the existing certificate to cover both cases.

30. While counsel on behalf of the State have argued that the complaint of the applicant is with regard to a distinction without a difference, I am not satisfied that such contention could be correct. Neither the Act or Regulations speak to ‘extensions’ of legal aid certificates, and the Court is not clear where any jurisdiction for adopting such a procedure could be said to arise.”

The Court granted an order of *certiorari* quashing the order of the District Judge to “extend” the Legal Aid Certificate.

24. The decision in *Horvath* clearly demonstrates that the granting of Legal Aid Certificates and what discretion the District Judge may have is governed by statute and the Regulations made thereunder. In this case, the application made to the first named respondent was to, in effect, “split” the Legal Aid Certificate granted by the District Judge on 28th April, 2015 into two certificates. This was not a case of the first named respondent “extending” a Legal Aid Certificate to cover additional charges.

25. In my view, the decision of the first named respondent not to grant a separate Legal Aid Certificate in respect of the Garda Reilly Charges, where one already existed, was in accordance with law and he did not have legal authority to act otherwise.

26. In the course of submissions, reference was made to the recent decision of Baker J. in *Charlie Ward v. the Minister for Justice and Equality* [2017] IEHC 656. This case concerned a different set of Regulations which provided that where one solicitor represented two or more accused in the same prosecution that solicitor was entitled to one set of costs only. Thus for a solicitor to decline to act for a second accused on the basis that he/she would not be paid for that work under the Criminal Legal Aid Scheme would result in a denial of the constitutional right of an accused person to choose any solicitor from the Criminal Legal Aid Panel. The issue in that case concerned the right to representation which is not the issue in the instant case.

27. It reaching my decision, I do appreciate that the effect of having both the Garda Hampson Charges and the Garda Reilly Charges on the one Legal Aid Certificate could result in a situation where the applicant’s solicitor would have to do a significant amount of professional work for little return. However, in the instant case this would have been mitigated by the fact that the applicant pleaded guilty.

28. By reason of the foregoing, the applicant is not entitled to an order of *certiorari* quashing the refusal of the first named respondent to grant a separate Legal Aid (District Court) Certificate for case no. 2015/76868.