**THE COURT OF APPEAL**

**CRIMINAL**

**Appeal No. 265/2016**

**Birmingham J.**
**Mahon J.**
**Hedigan J.**

**IN THE MATTER OF SECTION 2 OF THE CRIMINAL PROCEDURE ACT 1993**

**BETWEEN**

**THE DIRECTOR OF PUBLIC PROSECUTIONS**

**RESPONDENT**

**AND**

**JOHN ADAMS**

**APPELLANT**

**JUDGMENT of the Court delivered on the 24th day of April 2018 by Mr. Justice Hedigan**

1. On 27th May 1997, the applicant was extradited to Ireland from Northern Ireland, having previously failed to appear in the District Court in respect of charges of larceny, obtaining by false pretences and obtaining on foot of a forged document. On 28th May 1997, he pleaded guilty to 18 offences and was sentenced to three months' imprisonment.

2. Following a search of the applicant's premises conducted by the RUC while awaiting his rendition to Ireland, a number of photographs and a diary revealing details of serious sexual offences committed against three minors living in the Dundalk area were discovered. The applicant refused to be interviewed in connection with the Dundalk offences while he was in detention awaiting rendition in Northern Ireland and subsequently on his return to Ireland.

3. On 4th August 1997, the applicant was released from his sentence of three months' imprisonment and was arrested in connection with the Dundalk offences. He was subsequently charged with those offences and ultimately pleaded guilty.

4. Over the following six years, the applicant litigated a number of issues concerning his extradition by way of judicial review and Article 40 applications.

5. On 14th July 2003, the applicant pleaded guilty to four counts of unlawful carnal knowledge and to two counts of sexual assault. The offences related to three child victims. The matter was adjourned to 28th July 2003 for sentence. On that date, Carney J. sentenced the applicant to discretionary sentences of life imprisonment on each of the unlawful carnal knowledge counts and to four years' imprisonment on the sexual assault counts. The applicant was represented by solicitor and counsel on both dates.

6. The applicant appealed against the sentences imposed on him and on 21st December 2004, the Court of Criminal Appeal dismissed his application for leave to appeal against sentence, noting the case to be "one of the gravest cases to come before the courts in recent times". On the same date, the Court of Criminal Appeal also dismissed an application pursuant to s. 29 to certify a point of law of exceptional public importance to the Supreme Court. The applicant made a second s. 29 application three years later which also was unsuccessful.

7. The applicant commenced proceedings under s. 2 of the Criminal Procedure Act 1993 by way of notice of motion dated 14th June 2016 grounded upon an affidavit sworn on 10th June 2016. He commenced the proceedings as a litigant in person, but later obtained legal representation. It is this application with which the court is concerned today.

8. The applicant seeks to rely on the submissions of the Irish Government before the European Court of Human Rights in *Lynch & Whelan v. Ireland*, Judgment of the 8th July 2014, that preventive detention formed no part of Irish law. This, it is argued, constitutes a "newly discovered fact" for the purposes of s. 2 of the 1993 Act. This is now the sole ground upon which this application is made. The applicant refers the court to the *ex tempore* judgment of the Court of Criminal Appeal delivered on 21st December 2004 and to p. 4 thereof:

> *"We are conscious of the age of the appellant, but it does not seem to us that we can rule out the possibility that, insofar as any determinate sentence is concerned, that at least for the foreseeable future that the risk of reoffending might not be present having regard to the past history."*

This, they argue, means that the applicant was sentenced on the basis that he might reoffend and thus should be kept in prison to prevent that.

9. It is not readily apparent from this citation that this is what the Court of Criminal Appeal was actually saying. It is indeed the height of improbability that it was. Even allowing that the judgment was an *ex tempore* one, thereby possibly in places infelicitously worded, it cannot by any stretch of the imagination be interpreted to mean that Irish law provided for preventive detention. Indeed, in the very judgment of the European Court of Human Rights to which the applicant refers this Court, it notes that preventive detention forms no part of Irish law. A long line of authority supported this proposition.

10. Moreover, even if this was not so, the so-called *"clarification"* or alleged change in Irish law could not amount to a *"newly*

*discovered fact"* for the purposes of the Act. In *McKevitt v. DPP* [2013] 1 IR 750, the Court of Criminal Appeal held that a subsequent judgment of the Supreme Court, which declared invalid s. 29 of the Offences Against the State Act 1939, could not be considered a *"newly discovered fact"* for the purpose of the applicant's application pursuant to s. 2 of the 1993 Act. In *McKevitt*, the Court of Criminal Appeal, in discussing what constituted a *"newly discovered fact"* for the purposes of s. 2, stated as follows:

> *"In fact, an objective analysis of the authorities demonstrates the limited range of matters captured by s. 2 of the Act of 1993. The legislative intendment relates to material which could, should or might have been adduced at a trial of an evidential or factual nature, and which, seen objectively, would render the conviction a miscarriage of justice such that it should be quashed."*

Thus, the *"newly discovered fact"* sought to be relied on by the applicant herein clearly falls outside an evidential or factual matter which could or might have been adduced at trial.

11. Similarly, in *DPP v. Buck* [2015] IECCA 344, the applicant contended that the judgment in *DPP v. Gormley & White* [2014] IESC 17, constituted a newly discovered fact within the meaning of s. 2 of the 1993 Act. In rejecting that argument, the Court of Criminal Appeal noted that the applicant was seeking to rely on a judgment of the Supreme Court delivered many years after the applicant's case was finally concluded and stated:

> *"It would be to do violence to language to suggest that a much later decision of the Supreme Court could, under any circumstances, be regarded as a newly discovered fact."*

Thus, the applicant cannot rely on a purported change in Irish law as being a *"newly discovered fact"* for the purposes of section 2. This disposes of the application as manifestly unfounded.

12. It should, however, be noted that the sentences imposed on the applicant by Carney J. on 28th July 2003 were heavily influenced by the gravity of the offending against the three minors and the *"appalling facts"* of the case. In particular, the sentencing judge referred to the *"four volumes of photographs"* he was asked to view in connection with the offences, noting the contents to be *"the worst that would be found in any hardcore magazine anywhere".*

13. Moreover, in 2004, the Court of Criminal Appeal noted that the applicant was not a person who regretted his actions *"but rather felt a sense of achievement and gratification by what he had done, even to the point of making entries in his diaries"*. The court also noted that prior to sentencing the applicant had never expressed any sympathy, remorse or regret. There were, thus, ample grounds to justify the maximum sentence prescribed by law.

The application is refused.