



THE COURT OF APPEAL

Record No. 264/2018

Edwards J.
Baker J.
Kennedy J.

BETWEEN/

THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

- AND -

MARTIN QUINN

APPELLANT

JUDGMENT (ex tempore) of the Court delivered on the 5th day of February 2019 by Ms. Justice Baker

1. This is an application by Mr. Quinn for an extension of time within which to lodge an appeal and having considered the circumstances and the arguments made by counsel we are satisfied that no extension of time should be allowed.
2. The circumstances are as follows. Mr. Quinn was sentenced to four years, two and a half years on count, one and a half year in respect of three different offences, one was robbery, the other taking of a vehicle and the other a drugs offence.
3. It seems that the matters in issue were quite serious and the accused did brandish a firearm at the scene. That is probably not a matter that adds had any weight to our consideration as it was not before us on evidence from either side.
4. The appeal that is sought to be brought is an appeal against sentence.
5. The affidavit evidence before us is in very broad terms and is entirely generic. It does not engage with the circumstances of the delay and it does not engage with the basis on which the appeal is sought to be brought.
6. This does not meet any of the tests set out in the case law which are very well established. The law was considered in great detail by the Supreme Court and the *DPP v. Eamonn Kelly*, a case in 1982. It is clear that the overriding interests are the interests of justice. The interests of justice now, having regard to recent statutory provisions, must be held to include the interests of the victims. The explanation of the delay is always a factor that the court will have regard to. The explanation for the delay in this case is not sufficient to meet even a broad test or even a flexible test.
7. The evidence is, and there is evidence from Mr. O'Connor the solicitor for Mr. Quinn and from Mr. Quinn himself, that there was some difficulty communicating with Mr. O'Connor in the twenty-eight days after the sentence was imposed at the end of July 2017. That twenty-eight days were in the month of August. Mr. O'Connor says that during that time he had some turnover of staff and during that time he was on annual leave. That deals with a month only of the delay and that is a very small amount of the delay in the light of the fact that the delay is a year, probably in fact more accurately fourteen months, but allowing that the time between the lodging of the papers and the preparation of the papers occurred during the long vacation, I am prepared to say that the timeline was a year.
8. Mr. Quinn's own explanation for the delay is that he had difficulty in communicating with the solicitor due to a turnover of staff within his firm. That is an explanation by him regarding his failure to appeal the sentences in time. Again that explanation deals with the twenty-eight days.
9. There is no evidence at all from anyone as to what happened in the year between, let us say, early September 2017 and the end of July 2018 or October 2018. There is, in other words, no engagement with the facts or an explanation for the delay as is required in the case law.
10. The second matter that is always very much an issue in cases such as this is the basis of the appeal. The appeal grounds are generic, extremely generic, in their terms and by way of an aside I note that there is in fact a suggestion in the grounds of appeal that the trial judge failed to have regard to the ages of the complainants. It turns out that the complainants were in their early sixties and early twenties and accordingly that is not a ground that is understood by the court, but it is not a ground that would seem to us, taking it at its most broad, as being a factor that might have weighed one way or the other with regard to sentencing.
11. That is an example however of the very generic grounds which are set out in the notice of appeal and identified in the application by Mr. Quinn. I accept in the circumstances the argument of Mr. Collins that the grounds of appeal are wholly generic.
12. The reason why a court requires some engagement with the facts or the merits of the appeal is that the court will not grant an extension of time particularly when the time is as long as it was in this case, which is a year, unless it is satisfied that the interests of justice do suggest that a person should be entitled to ventilate a ground of appeal which is at least arguable in some way.
13. This court does not engage at all with the merits of the appeal but the court is entitled to take into account that the interests of justice, the interests of the proper administration of the courts and the interests of the victims are best served by the court coming to its decision on an extension of time in the light of some broad view as to what the basis of the appeal is.
14. For completeness I reject the suggestion made by Mr. Miley on behalf of Mr. Quinn that if the extension of time is not granted

that Mr. Quinn would be prejudiced by the actions of his solicitors. That prejudice, insofar as it might be called that, relates only to the period in August 2017 for which we do have an explanation and if that had been the sole delay we would have been talking of no more than a period of maybe days or a short number of weeks. In those circumstances we would have been meeting a very different application. The prejudice, if there is one, is the prejudice arising from the actions of Mr. Quinn himself in failing to show us that he did actually contact or try to contact a solicitor in the entire year that expired between August 2017 and July 2018. He does not say that he wrote letters. He does not say that he attempted telephone calls. He does not say he asked the Governor to contact his solicitor.

15. Finally, and this is a matter of some concern to us. Much of what we heard in the way of argument was based on counsel's own memory of what had happened in the case. This is not a proper way in which to bring an application like this. The application is one grounded on affidavit. While it might be acceptable that counsel would answer in response to a question from the court by reference to what counsel himself or herself says happened at the hearing, that kind of evidence is acceptable only when it is given an answer to a question from the court. If the basis of the case is to be the evidence, which is what it has to be seen as, adduced by counsel on his/her feet then that meets none of the tests in the requirements of affidavit evidence. It meets none of the tests of evidence that is admissible before this court and it cannot form the basis of the application.

16. Be that as it may, one matter did concern me and that is that Mr. Miley on his feet did say that he did speak to Mr. Quinn after the hearing. He gave him some advice regarding an appeal but he did not give instructions on that day of any intention to appeal.

17. Mr. Quinn himself says in his affidavit that he did formally intent to appeal within the twenty-eight days but I have to come to the conclusion that the statement of Mr. Quinn in his affidavit is also a generic statement and he does not explain what time within the twenty-eight days he formed that intention and on what basis.

18. So for all of those reasons it seems to me that the application is to be refused.