

THE HIGH COURT**[2014 No. 453JR]****JUDICIAL REVIEW****BETWEEN:****AARON DALY****APPLICANT****AND****THE DIRECTOR OF PUBLIC PROSECUTIONS AND JUDGE JOHN O'CONNOR****RESPONDENTS****JUDGMENT of Kearns P. delivered on 25th day of June, 2015**

The applicant herein seeks an injunction by way of application for judicial review restraining the first named respondent from further prosecuting the applicant in respect of the offence alleged on charge sheet number 14542524 on the grounds that there was blameworthy prosecutorial delay such that the applicant lost the benefit of being tried as a minor.

The applicant further seeks a declaration that the applicant's right to a fair trial in the said prosecution, or in any other prosecution purporting to arise from the allegations the subject matter of that prosecution has been irretrievably prejudiced and that the applicant's rights pursuant to Article 38 of the Constitution have been breached.

Alternatively, an order of *certiorari* is sought quashing the order made by the second named respondent on 10th June, 2014 refusing to decide on the issue of prosecutorial delay in respect of this prosecution.

BACKGROUND

The applicant in these proceedings was born on 16th November, 1995. He is charged with section 3 assault on a young woman which occurred on 21st April, 2013, when the applicant was 17 years old. The victim spoke to gardaí on the night of the incident and gave a statement to Gardai on 26th April, 2013 in which she alleged that she was the subject of an unprovoked attack whilst walking home at night with her friend, Ms. Stacey Byrne. It is alleged that a glass bottle was thrown at her, causing an injury to her arm, and that upon approaching a group of people, which included the applicant, in relation to this, she was punched in the face by him, causing her to lose consciousness and resulting in injuries to her face and eye.

The manner in which the Garda investigation proceeded is set out in the affidavit of Sergeant Damien Mangan. He states that on the night of the incident he met with the injured party at Beaumont Hospital and took her contact details and a brief account of the incident. The victim named the applicant as being present during the incident but did not positively identify him as the person who had assaulted her. The victim gave a formal statement to Gardai on 26th April, 2013. Ms. Byrne also gave a statement to gardai around this time in which she identified a person named 'Aaron Hatton' as being the person who assaulted the injured party.

On 1st May, 2013 statements were taken from ambulance personnel who attended the scene. Throughout the months of May and June Sergeant Mangan conducted a number of enquiries and met with various potential witnesses. However, he states that a large number of witnesses indicated that they did not wish to make a statement and were uncooperative with the Garda investigation. Sergeant Mangan avers that in June 2013 he made a conscious decision not to approach any potential witnesses or suspects as he was aware that a number of those believed to be involved in the incident were sitting their Leaving Certificate examination at that time.

The applicant in these proceedings was interviewed by gardai on 14th September 2013 after gardai had approached all identifiable witnesses. A transcript of this interview is exhibited. The applicant denied any involvement in or knowledge of the incident and offered an alibi for the night in question.

After taking further statements on foot of information obtained in the applicant's initial interview and a statement from the applicant's girlfriend which identified him as the perpetrator of the alleged offence, the applicant admitted the offence to the investigating gardai and retracted his alibi.

Sergeant Mangan completed the investigation file on 4th October, 2013 and forwarded it to his superiors who in turn forwarded it to the Director of Children and Youth Affairs on 10th October, 2013. The matter was then progressed by the Garda Youth Diversion Office and on 16th December, 2013 Superintendent Colette Quinn of that office wrote a letter to the local Superintendent indicating her belief that the applicant was unsuitable for inclusion in the Juvenile Diversion Programme.

The applicant was arrested for the purpose of charging him with the offence on 25th February, 2014 and was released on bail to appear before the Children's Court on 11th March, 2014. The case file was sent to the DPP on 3rd March and directions were received on 25th March. The matter came before the court again on 29th April, 2014 and it was agreed that full disclosure would be furnished before the matter next came before the court on 27th May, 2014. On that date, disclosure having been provided on 22nd May, the applicant's representative advanced submissions regarding delay and prejudice and the matter was adjourned to 10th June, 2014 so that this issue could be dealt with.

The second named respondent refused to strike out proceedings on grounds of delay on 10th June, 2014. A book of evidence was served on the applicant on 22nd July, 2014 and the applicant was sent forward to Dublin Circuit Criminal Court on 10th October 2014. Leave to bring the present proceedings was granted by Baker J. on 28th July, 2014.

SUBMISSIONS OF THE APPLICANT

Counsel for the applicant submits that the loss of the applicant's entitlement to rely upon s.75 of the Children's Act is a factor which merits prohibition in the present case. Section 75 states that *"the Court may deal summarily with a child charged with any indictable offence, other than an offence which is required to be tried by the Central Criminal Court or manslaughter, unless the Court is of opinion that the offence does not constitute a minor offence fit to be tried summarily or, where the child wishes to plead guilty, to be dealt with summarily."* The applicant contends that delay on the part of the prosecution disqualified him from the provisions of s.75 and the potential that a District Judge sitting in the Children's Court would have accepted jurisdiction in the particular circumstances of the case.

It is a well established principle that there is a particular onus on the prosecution to ensure a speedy trial in the case of a juvenile. In *BF v Director of Public Prosecutions* [2001] 1 I.R. 656 the accused was alleged to have committed very serious sexual offences on two girls when he was aged 14. He was interviewed by gardaí shortly afterwards and admitted the offences but was not charged. He then travelled to England from where he was extradited 2 years and 9 months later. The Court granted an order of prohibition on grounds of delay and indicated that where there was culpable delay on the part of the prosecution, an order of prohibition could be granted irrespective of whether there was prejudice to the accused as a result of the delay. Counsel for the applicant points out that Geoghegan J. emphasised that there was a "special obligation of expedition" where the accused was a juvenile at the time of the offence.

In *Jackson & Walsh v Director of Public Prosecutions* [2004] IEHC 380 the first applicant was aged 15 at the time of the offence and had been arrested and made admissions six weeks after the incident occurred. However, an arrest warrant for the purpose of charging him had not been sought for a further period of 18 months. Further delay was caused due to the failure to serve the book of evidence on the accused and an additional lapse of time also occurred in re-charging him with the offences. The second applicant was aged 16 at the time of the offence and there was a similar period of delay in seeking a warrant for his arrest. Ultimately, he was charged 3 years after the incident. Quirke J. granted orders of prohibition and rejected the contention of the respondent that the principle in *BF* only applied to sexual offences. At p.17 of his decision Quirke J. stated as follows –

"I take the view that where a criminal offence is alleged to have been committed by a child or a young person there is always a special duty upon the State authorities (over and above its fundamental duty), to ensure a speedy trial of the child or young person in respect of the charges preferred."

In *Director of Public Prosecutions v Patrick Donoghue* [2012] 332 JR the applicant was charged with possession of a quantity of heroin three days after his sixteenth birthday. The applicant made admissions at the scene and in his garda interview and certification issued from the Forensic Science Laboratory some six weeks after the incident. Nevertheless, the applicant was not charged by the respondent until over 16 months after the date of the alleged offence. Birmingham J. found that there had been *"significant, culpable prosecutorial delay"* in the case and considered the case law in this area. Birmingham J. concluded that the loss of protections under the Children Act 2001 was a most serious consequence of the delay and granted an order of prohibition.

This decision was later appealed to the Supreme Court where Dunne J. analysed the reasons put forward by the respondent for each period of delay in the case and found that, while a report from both the Forensic Science Laboratory and the Juvenile Liaison Office was required, there was culpable delay on the part of the respondent. The respondent also argued on appeal that the High Court had erred in failing to carry out a balancing exercise as envisaged in *PM v Director of Public Prosecutions* [2006] 3 IR 172 and that only one factor identified in the US case of *Barker v Wingo* [1972] 404 U.S. 514 was relevant in the accused's case. The Supreme Court held that the *Barker v Wingo* factors were of little relevance in the case as Mr. Donoghue was not contending that there was prejudice to the fairness of his trial, but rather to his sentence in circumstances where the court accepted the likelihood he would plead guilty. Such prejudice included factors specific to juvenile offenders such as his loss of anonymity, the absence of the statutory principle that custody should be a measure of last resort and the requirement to obtain a pre-sentence report from the Probation and Welfare Service.

In her recent decision in *Cullen v Director of Public Prosecutions* O'Malley J. applied the aforementioned case law and principle. The decision was upheld on appeal to the Supreme Court (2014 IESC 59) where Denham CJ cited with approval the following passage from O'Malley, *The Criminal Process* (2009, Dublin: Round Hall) –

"The young age of the defendant is another factor which may be placed in the balance once blameworthy prosecutorial delay has been established. Courts are much less tolerant of delay in processing charges against young defendants which means that a lapse of time will become blameworthy more readily than in the case of adult defendants"

In relation to the special duty on the State to ensure the speedy trial of a juvenile accused, counsel for the applicant further relies on the decisions in *A.C. v Director of Public Prosecutions* [2008] 3 IR 398 and *G v Director of Public Prosecutions* [2014] IEHC 33. In the latter case O'Malley J. referred to this general duty in the following terms –

"Children differ from adults, not just in their physical development and lesser experience of the world, but in their intellectual, social and emotional understanding. It is for this reason that it has long been recognised that it is unfair to hold a child to account for his or her behaviour to the extent that would be appropriate when dealing with an adult. Further, it has been accepted since, at least, the enactment of the Children Act of 1908, that the fact that these aspects of personality are still developing means that intervention at an early stage, rather a purely punitive approach, may assist in a positive outcome as the child reaches adulthood."

O'Malley J. went on to state that the loss of special status of childhood through blameworthy delay was a very serious consequence –

"I consider, rather, that the special legal status of childhood is an interest to be protected either on a sui generis basis or under the general heading of the right to a reasonably expeditious trial. It seems to me that the loss of that status through blameworthy delay on the part of the prosecution authorities may be, in itself, a matter resulting in real prejudice which may entitle an applicant to relief..."

O'Malley J. further noted that while the fact that an accused person had made admissions was often a factor operating against granting an order of prohibition, she held that this was a factor that *"may have to be looked at in a different light in the case of juveniles"* as *"[t]he making of admissions at an early stage facilitates expedition of the trial process."*

In the present case, counsel for the applicant submits that the alleged offence occurred seven months prior to the applicant's 18th birthday. He was identified by the injured party both on the night of the incident (21st April, 2013) and in her statement to gardaí five days later. Nevertheless, there was a five month gap before the applicant was interviewed (14th September, 2013) and a further five

month delay before he was charged, by which time he had turned 18. It is submitted that these periods cannot be viewed as anything other than culpable delay.

Counsel submits that the purported reasons for the delay are wholly inadequate. While Garda Mangan states that active inquiries were being made between April and September, the significance of these enquiries are not explained. No explanation has been given by Garda Mangan as to why a decision was made to delay the questioning of the identified perpetrator of the assault. Counsel submits that it is clear from the book of evidence that gardaí had information as to the identity of the alleged perpetrator since the night of the incident, which is at odds with Garda Mangan's suggestion in these proceedings that there was "no concrete evidence about the perpetrator of the assault." In those circumstances, it is submitted that the evidence against the applicant was largely completed by 26th April 2013. The remainder of the evidence included in the book of evidence could and should have been gathered by gardaí much sooner.

While it is accepted that the matter should have been referred to the Juvenile Liaison Office, it is submitted that an incomplete file was sent and, despite only taking 18 days to make a decision when a completed file was eventually received, it took a further two months to actually charge the applicant.

Counsel for the applicant submits that the loss of protections under the Children Act 2001 is a significant prejudice to the applicant. In particular, the loss of the right to make submissions pursuant to section 75 of that Act is significant as very specific submissions could have been made to the District Judge in relation to the age and maturity of the applicant. This deprived the applicant of the prospect of having his case heard in the Children's Court and sentence being imposed before he turned 18.

SUBMISSIONS OF THE RESPONDENT

Counsel for the respondent submits that the applicable law in this area has been summarised by the Supreme Court in the decision of *Patrick Donoghue v DPP* [2014] IESC 56 wherein Dunne J. stated –

"The special duty of State authorities owed to a child or young person over and above the normal duty of expedition to ensure a speedy trial is an important factor which must be considered in deciding whether there has been blameworthy prosecutorial delay. That special duty does not of itself and without more result in the prohibition of a trial. As in any case of blameworthy prosecutorial delay, something more has to be put in the balance to outweigh the public interest in the prosecution of offences. What that may be will depend upon the facts and circumstances of any given case. In any given case, the age of the young person before the courts will be of relevance. Someone close to the age of eighteen at the time of an alleged offence is not likely to be tried as a child no matter how expeditious the State authorities may be in dealing with the matter."

It is submitted therefore that the Court must first consider whether there is blameworthy prosecutorial delay in the case. If so, the Court must next embark on the balancing test set out above. However, if the child is close to the age of 18 at the time of the alleged offence, counsel for the respondent submits that there is no reality to the accused being sentenced as a child. It is submitted that each case must turn on its own particular facts.

It is submitted on behalf of the DPP that there has been no blameworthy prosecutorial delay in the present case. A file was submitted promptly to both the Youth Diversion Office and the office of the DPP once the investigation was complete.

Counsel submits that the applicant has placed considerable reliance on the fact that he was not interviewed until September 2013 despite the offence having been committed in April of that year. The respondent contends that the gardaí initially had scant evidence against the applicant and, contrary to what is submitted on behalf of the applicant, it is not accurate to say that the applicant was positively identified as the perpetrator on the night of the incident. The injured party told gardaí she did not remember who hit her as she had been knocked unconscious. Her friend identified the perpetrator as being known to the injured party but wrongfully identified him as 'Aaron Hatton'.

It is further submitted that the investigating gardaí were required to approach a number of potential witnesses throughout May and June. Gardaí approached these persons and also carried out house to house enquiries. It is submitted that the gardaí were met by a 'wall of silence' throughout the investigation and experienced considerable difficulty in securing statements which hampered the completion of the investigation.

Sergeant Mangan accepts that part of the alleged delay was due to a conscious decision on his part not to approach potential witnesses for a period in June as he was aware that many were undergoing their Leaving Certificate examinations. Furthermore, it is submitted that the gardaí adopted an investigative approach of attempting to identify and interview as many potential witnesses as possible before interviewing the suspect.

When the applicant was interviewed in September, it is submitted on behalf of the respondent that he provided a false alibi for the night in question and denied any involvement in the offence. He did however identify his girlfriend and gardaí acted promptly in having her interviewed in the presence of her father. Information obtained in this interview caused led to the applicant being interviewed for a second time during which interview he retracted his alibi and made admissions in relation to the offence.

It is submitted that once admissions were made, the garda file was completed within three weeks and forwarded to the Youth Diversion Office. That office took two months to consider the matter as they required clarification as to the views of the injured party. By the time a recommendation issued on 16th December, 2013, the applicant had turned 18 on 16th November, 2013. The file was then sent to senior garda officers for directions and the applicant was charged on 25th February 2014. Directions from the respondent to proceed on indictment or to send forward on a signed plea issued on 25th March, 2014.

Counsel for the respondent submits that it is clear from an examination of the chronology of events that this is not a case where the gardaí sat on their hands and delayed in conducting the investigation. Active attempts were made from the outset to conduct a thorough investigation that would culminate with a file where there would be sufficient evidence for a prosecution. While it is submitted that, in the absence of some obvious neglect or clear delay, the manner in which an investigation proceeds is a matter for the gardaí, this investigation was in any event completed five and a half months after the incident.

It is submitted that cases where the courts have ordered prohibition of prosecutions involving juveniles generally turn on factual situations where there has been very long periods of inordinate and inexcusable periods of delay. In the *Patrick Donoghue* case, for example, the accused had made full admissions but an investigation file was not completed and sent to the DPP for some thirteen months. There was also a further three month period of delay in charging the accused after directions were received from the DPP. Counsel submits that Dunne J. specifically accepted that some delay will be caused by the consideration of the file in the Juvenile

Liaison Office and that an applicant cannot complain about the time taken to properly assess a person suitability for the programme. –

"The Act contains provisions at sections 17 to 51 in relation to the Juvenile Diversion Programme aimed at preventing young offenders from entering the normal criminal justice system. It is part of the policy underpinning the Children Act 2001 that children should be kept out of the criminal justice system where possible; obviously, some time will be taken in assessing whether an individual is suitable for diversion to the Juvenile Diversion Programme. Inevitably, this must cause some delay in the prosecution of young offenders. No complaint could be made about the delay caused by the necessity to engage with the National Juvenile Office and it is fair to say that no such complaint was made by Mr. Donoghue. Thus, in considering the delay in any case involving a young person, it is important to bear in mind that some allowance must be made for the time taken up by the involvement of the National Juvenile Office. Such delay will, of course, not arise in the case of an adult offender."

It is submitted that the facts of the present case are not dissimilar to the case of *Paul Kelly and Karl O'Malley v DPP and Garda Commissioner* [2009] IEHC 200 where Hedigan J. refused prohibition in a case where a year had elapsed between commission of the offence and the date of charge. In that case the two applicants were one and two months over seventeen years of age respectively when the offence of s.3 assault occurred. Two months after the commission of the offence a file was submitted to the Juvenile Liaison Office and a month later a decision that the applicants were not suitable for the programme. A further three months elapsed before a file was sent to the DPP. Three and a half months later the DPP issued directions to charge the applicants with s.3 assault and violent disorder. It was further directed that an up to date medical report be prepared which was received within two months. The applicants were charged two weeks later, having already turned 18.

Hedigan J. referred to the following passage of Kearns J. in the decision in *McFarlane v DPP* [2008] IESC 7 –

"It is all too easy to lose sight of the fact that there are victims of crime whose interests must not be swept aside in this exercise. The court must therefore analyse the causes of delay with great care, weighing up and balancing the role of both the prosecution and the applicant and their respective contributions to delay."

Hedigan J. went on to find that (at paras. 40 and 41) –

"I am unable to accept that the lapse of time which occurred is sufficient to warrant an order of prohibition preventing the further prosecution of the offences charged. While it would undoubtedly have been preferable had the prosecuting authorities brought the charges more swiftly, I do not think that their conduct was "inordinate, blameworthy or inexcusable" to any significant extent.

Even if I were incorrect in that assessment, it seems to me society's interest in the prosecution of violent attacks, such as those alleged to have occurred in the present case, heavily outweighs any infringement of the applicants' right to an expeditious trial. It is not necessary for me to make any assumption as to how the Children's Court would have dealt with this matter; it is sufficient for the Court to note that the crimes alleged are of an extremely serious nature and to weigh that factor in the balance."

Hedigan J. further noted that the trial court would be presumed to act fairly in considering the age of the applicants when the offence was committed –

"It is presumed that the trial judge will conduct the proceedings in the fairest manner possible to the applicants and, if they are convicted, their age at the time of the commission of the alleged offences is undoubtedly a factor which will be taken into account."

Counsel for the respondent submits that the decision of O'Malley J. in *G v D.P.P.* [2014] IEHC 33 highlights that in order to secure an order of prohibition there must be very significant periods of unexplained delay, counted in years and not in months. Counsel refers the Court to the decisions in *B.F. v D.P.P.* [2001] IR 656 and *Walsh & Jackson v D.P.P.* (Unreported, High Court, Quirke J., 8th December 2004), which are relied upon by the applicant, as examples of cases involving lengthy periods of prosecutorial delay which warranted prohibition.

It is submitted that even if the Court finds that there has been culpable prosecutorial delay in the present case, which is strenuously denied, the Court must then embark on a balancing exercise to determine whether prohibition should lie. In this regard, counsel relies on the decision of Dunne J. in *Donoghue* where it was stressed that the closer a child is to 18 years of age, the less there will be to put in the balance in favour of prohibition. Dunne J. stated –

"There is no doubt that once there is a finding that blameworthy prosecutorial delay has occurred, a balancing exercise must be conducted to establish if there is by reason of the delay something additional to the delay itself to outweigh the public interest in the prosecution of serious offences. In the case of a child there may well be adverse consequences caused by a blameworthy prosecutorial delay which flow from the fact that the person facing trial is no longer a child. However, the facts and circumstances of each case will have to be considered carefully. The nature of the case may be such that notwithstanding the fact that a person who was a child at the time of the commission of the alleged offence may face trial as an adult, the public interest in having the matter brought to trial may be such as to require the trial to proceed. Thus, in a case involving a very serious charge, the fact that the person to be tried was a child at the time of the commission of the alleged offence and as a consequence of the delay will be tried as an adult may not be sufficient to outweigh the public interest in having such a charge proceed to trial. In carrying out the balancing exercise, one could attach little or no weight to the fact that someone would be tried as an adult in respect of an offence alleged to have been committed whilst a child if the alleged offence occurred shortly before their eighteenth birthday. Therefore, in any given case a balancing exercise has to be carried out in which a number of factors will have to be put into the melting pot, including the length of delay itself, the age of the person to be tried at the time of the alleged offence, the seriousness of the charge, the complexity of the case, the nature of any prejudice relied on and any other relevant facts and circumstances. It is not enough to rely on the special duty on the State authorities to ensure a speedy trial of the child to prohibit a trial. An applicant must show something more as a consequence of the delay in order to prohibit the trial."

In the present case the applicant was 17 years and 5 months at the time of the commission of the offence. It was a very serious offence and a difficult investigation where gardaí received little co-operation from a number of potential witnesses. While the applicant contends that the loss of the possibility of gaining the benefit of section 75 of the Children Act 2001 is a major prejudice to him, it is submitted that even if the investigation had been completed more expeditiously, it is unlikely that sentencing would have

been concluded before the applicant turned 18. In any event, section 75 requires the court to be satisfied that the offence is a minor offence fit to be tried summarily and must also take into account the age and maturity of the child involved.

In all of the circumstances of this case it is submitted that no blameworthy prosecutorial delay has been established and that, in any event, the balance is in favour of allowing the prosecution to be concluded in accordance with law.

DISCUSSION

It is a well established principle that there is a special duty on State authorities, over and above the normal duty in relation to adults, to act expeditiously and ensure a speedy trial in cases involving juveniles. The reasons for this requirement are well set out in the decision of O'Malley J. in *G v Director of Public Prosecutions* [2014] IEHC 33 and they relate primarily to the intellectual, social, and emotional differences between children and adults. The cases relied upon by the applicant in the present proceedings make clear that the courts are much less tolerant of prosecutorial delay in cases involving juveniles. However, as submitted by counsel for the respondent, the decision of Dunne J. in *Patrick Donoghue v DPP* makes clear that each case will turn on its own particular facts and that, if blameworthy prosecutorial delay is established, the court must also embark upon a balancing exercise to determine if there are any additional factors which cause the implications of the delay to the accused to outweigh the public interest in prosecution.

The present case concerns a particularly reprehensible and unprovoked assault in which the victim had a glass bottle thrown at her and almost immediately afterwards was knocked unconscious by a punch to the face. The gardaí spoke with the victim on the night of the incident and took a formal statement five days later on 26th April 2014.

Counsel on behalf of the applicant submits that, having been identified by the injured party as being at the scene, and as Ms. Byrne told gardaí that a person known to the victim named 'Aaron' had committed the assault, the applicant should have been interviewed much sooner by the gardaí. By way of reply, the respondent submits that the gardaí had no concrete evidence against the accused and there were difficulties with firm identification of the suspect at the outset. Therefore, the gardaí adopted an investigative approach of gathering as much evidence as possible before interviewing a suspect. In my view, having regard to the duties owed by gardaí to victims of crime and the public in general in terms of comprehensively and competently investigating serious crime, this was a sensible course to adopt. Indeed, having regard to the fact that when the applicant was initially interviewed he denied all knowledge of the incident and provided a false alibi, the desire on the part of the investigating gardaí to have as much information as possible to confront any suspect with is even more understandable.

The Court accepts that the role of the investigating gardaí in this case was made more difficult by the fact that a number of witnesses were entirely uncooperative and unwilling to make a statement. In those circumstances, numerous potential witnesses were approached and house to house enquiries took place. Sergeant Mangan candidly accepts that he made a conscious decision not to approach some witnesses during their Leaving Certificate examinations having regard to the stresses young people are already under around this time. This decision can hardly be criticised. When the identity of the applicant's girlfriend became known to gardaí during his first interview, they acted swiftly in obtaining a statement from her and interviewing the applicant for a second time. It was during this second interview that admissions were made and the garda file was then completed within three weeks and sent to the Garda Youth Diversion Office.

A further period of delay arose at this stage. However, I am satisfied that it has been adequately explained by the respondent. The Youth Diversion Office, upon receipt of the file, sought further information in relation to the views of the injured party. Sergeant Mangan received this request on 22nd November 2013 and replied on 25th November, 2013. It is accepted by counsel for the applicant that the Youth Diversion Office cannot be criticised for any delay and that office issued its decision on 16th December, 2013. By this stage the applicant had already turned 18 and it is arguable that any delay thereafter is not relevant to the applicant's loss of minor status. In any event, in January 2014 the file was sent to senior gardaí for directions and Sergeant Mangan subsequently charged the applicant on 25th February, 2014.

In all of those circumstances I am satisfied that the garda investigation proceeded at a satisfactory pace and that any periods of delay thereafter have been adequately explained by the respondent. While the importance of ensuring a speedy trial in the case of juveniles is well established, certain factors may arise in each case which determine how expeditiously this can occur and there can be no obligation on prosecution authorities to unrealistically prioritise cases involving minors. In the view of the Court there was no blameworthy prosecutorial delay in this case.

Even if I am wrong in this, applying the balancing test described by Dunne J. in *Donoghue*, I am satisfied that the applicant has failed to tip the balance in favour of prohibition. As stated by Dunne J., something more than prosecutorial delay alone needs to be established in order to outweigh the public interest in the prosecution of the offence.

The applicant has placed considerable reliance on the loss of his ability to rely on the provisions of s75 of the Childrens Act. The Court accepts the argument advanced on behalf of the respondent that even if the garda investigation had been completed sooner, for example within three months of the date of commission, given the requirement to send the file to the Youth Diversion Office and the office of the D.P.P., it is highly unlikely that a s.75 hearing and the sentencing of the applicant would have been completed by the time he was 18. In considering this aspect of the case, the Court has also had regard to the finding of the Supreme Court in *Donoghue* that "*someone close to the age of eighteen at the time of an alleged offence is not likely to be tried as a child no matter how expeditious the State authorities may be in dealing with the matter*".

A further factor which tips the balance in favour of the respondent is the complexity and difficulties faced by the gardaí during the course of the investigation as already outlined. Also in the 'melting pot' of factors the Court is required to consider is the seriousness of the offence. This was a particularly nasty and unprovoked assault which left the injured party with swelling to her left eye and a subconjunctival haemorrhage. Trial on indictment was directed by the respondent. No evidence has been put before the Court that the applicant is below the average level of maturity of a person his age. At the time of the offence he was 17 years and 5 months and informed gardaí during his interview that he had represented his school in boxing competitions and had been approached by local boxing clubs to become a member.

The Court therefore finds that there has been no inordinate, blameworthy, or inexcusable delay on the part of the prosecuting authorities. Furthermore, in all the circumstances of this particular case, the public interest in the prosecution of serious offences heavily outweighs any suggested infringement of the applicant's right to an expeditious trial.

As noted by Hedigan J. in *Paul Kelly and Karl O'Malley v D.P.P.*, the trial judge is required to conduct proceedings in the fairest manner possible and, if convicted, the applicant's age at the time of the commission of the offence is a factor which will undoubtedly be relied upon by his legal representatives and which the court will take into account.

DECISION

In light of the foregoing I would refuse the relief sought.