



THE COURT OF APPEAL

[262/17]

Birmingham P

Hedigan J.

McCarthy J.

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

ALAN BOOHAN

APPELLANT

JUDGMENT (Ex tempore) of the Court delivered on the 23rd day of July 2018 by Birmingham P.

1. This matter before the Court sees the applicant seeking to extend time within which to bring an appeal to this Court. What he seeks to do is to appeal a conviction of 22nd October 2015 in Limerick Circuit Court.
2. The application is moved by Mr. Boohan as a litigant in person, but it the case that Mr. Boohan was represented by a solicitor and Senior and Junior Counsel at trial, and indeed in the course of an earlier trial which had resulted in a disagreement.
3. The Court has only limited information about the trial, but insofar as it does have information available to it, that goes some way towards suggesting that there are some unusual features. We have been told that the jury added a rider to explain that it had reached its verdict on the basis of recklessness. We note, too, that Mr. Boohan was sentenced to three years' imprisonment, but that sentence was suspended in full, a very unusual outcome for a s. 4 assault i.e. an offence of assault causing serious harm. It seems that that sentence was not the subject of review.
4. The approach to be taken by appellate courts when faced with a request to extend time within which to appeal was considered in the case of Nicky Kelly, the so-called Sallins train robbery case. It will be recalled that what happened there was that Mr. Kelly had stood trial along with two co-accused. At trial, there was an issue about the admissibility of admissions made by the various accused. Before the trial came to an end, Mr. Kelly absconded. He was therefore convicted in his absence. Mr. Kelly's co-accused were also convicted. They brought an appeal and that appeal was successful. In those circumstances, Mr. Kelly returned home and sought to appeal. He was met with the response that he clearly had not formed any intention of appealing within the time prescribed. Ultimately, the matter went to the Supreme Court and the Supreme Court made clear that what requires to be addressed is what serves the interests of justice.
5. In this case, the appeal is very substantially out of time, and indeed, in fairness to Mr. Boohan, he acknowledges as much. It is also clear to the Court that Mr. Boohan is very concerned with the outcome and he has devoted an enormous amount of time and effort since the conviction to seeking to put himself in a position to set that conviction aside. That has seen him exploring options for alternative representation. He has explored a number of possibilities in that regard and it is also seen him investigating aspects of the evidence himself. Much of that effort is addressed to establishing that the wounds suffered by the injured party were in fact self-inflicted. This has seen Mr. Boohan in contact with forensic pathologists that he has made contact with over the Internet, and with them he has probed the question of wound causation.
6. The stage has been reached, though, where counsel for the DPP makes the point, and to the Court it seems to be a fair point, that what Mr. Boohan seeks to do now is to be allowed appeal on the basis that he would hope to provide additional evidence and introduce additional evidence. It does not seem that the question of self-infliction was an issue at either trial; indeed, medical evidence was apparently read by agreement, though it does also seem that the issue of self-infliction was an issue that had occurred to the then accused, now appellant.
7. Amongst the papers that we have been provided with is a report from Professor Busuttil, the distinguished forensic pathologist from Scotland, who has offered assistance to these courts on a number of occasions over the years. He explains that what was available to him was the book of evidence; the disclosure and also a forensic statement by a German forensic expert, Dr. Ulrike Böhm, who, it would seem, on the basis of whatever information was made available there, was of the view that it was highly probable that self-mutilation was a feature.
8. Dr. Busuttil, on the other hand, and his report is put before us by Mr. Bohm, is firmly of the view that the injuries were not, in fact, self-inflicted. He says:

"[i]n the light of my own personal experience of over 40 years of having seen and assessed all types of wounds, including

self-inflicted ones, and with the benefit of the information noted above, I am unable to concur with the view that the neck wound on Eoghan O'Callaghan was a self-inflicted wound."

This report was put before the Court by Mr. Boohan.

9. Another point made by Mr. Boohan is that he has spoken to somebody since the case who told him that he had seen a van that was involved in a crash, a van belonging to Mr. Boohan, but which at the time shortly before the incident occurred, was being driven by Mr. O'Callaghan, the injured party. While there was broken glass in that van, there was no blood and Mr. Boohan attaches significance to this. But that, as in so many of the matters that Mr. Boohan has canvassed, was something that was potentially available at trial. It appears that there was no forensic examination possible of the van because the van was removed after the impact. But insofar as it was sought to establish that there was no blood, that was something that could have been addressed by attempting to track down any witnesses that were in contact with the van.

10. Overall, the Court has not been persuaded that at this point in time that sufficient material has been put before us as would justify us in extending time. It seems to the Court that the interests of justice are served when there is a finality to litigation, including criminal litigation. In this case, the alleged offence occurred in 2001.

11. It seems to the Court that there just cannot be a situation where the proceedings are kept alive indefinitely. We understand how important this case is to Mr. Boohan; we have sympathy with him. We have already referred to the very considerable efforts that he has made in order to provide a basis for re-opening the case, but we have not been convinced that that basis exists as of today.

12. In the circumstances, we refuse the application to extend time.