THE COURT OF APPEAL

[123/20]

The President

Edwards J

McCarthy J

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

BETWEEN

THE PEOPLE AT THE SUIT OF THE DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

AND

PHILIPPE CAUNEZE

APPELLANT

JUDGMENT (Ex tempore) of the Court delivered (by remote hearing) on the 15th day of April 2021 by Birmingham P

1. This is yet another application brought by Mr Cauneze pursuant to s. 2 of the Criminal Procedure Act 1993 in response to his conviction in respect of an offence of aggravated sexual assault on 10th March, 2000. By our reckoning, it is now the fourth such application to be dealt with by the Court of Appeal, and again, by our reckoning, overall, it would seem to be the it is the sixth application pursuant to s. 2 that has been brought by Mr Cauneze.

2. In the course of our most recent judgment on the topic, a judgment delivered on 13th November 2017, we referenced an earlier decision of 21st December 2015, in the course of which we had set out in considerable detail what was described there as an extraordinarily convoluted background to that application. On that occasion, the Court concluded its judgment as follows, "regrettably, it must be said that this attempt to re-litigate what has already been decided is vexatious and is an abuse of process" and the Court then proceeded to dismiss the application.

3. Despite that observation by the Court, Mr Cauneze, rather than leaving matters there, saw fit to bring a further application, and that further application was the subject of a judgment dated 15th April,2016, and that judgment, too, concluded with an observation that these proceedings were becoming vexatious. We said "the Court said on the last

occasion that this was vexatious and an abuse of process. At this stage, it is a flagrant abuse of process and is entirely vexatious".

4. Then, there was what was at that stage the fifth such application. In the course of its judgment on that occasion, 21stDecember 2015 this Court had commented that "nothing whatever has been produced which could possibly be regarded as a new or newly discovered fact". It has to be said that was the situation in December 2015, that was the situation in April, 2016, that was the situation on 13th November 2017 and it remains the situation now. Across all of these applications, there have been recurring themes from Mr. Cauneze, and he points to these as indicative of the fact that a miscarriage of justice occurred. In that regard, he points to the fact that, he says, the transcript of the trial was not authentic. He categorises it as a forgery, and then, moving on from that, he has contended on recent occasions that the book of evidence has been falsified, but as we pointed out in November 2017, contentions that the book of evidence had been falsified do not take the matter any further.

5. The focus at this stage, to a significant extent, is on the book of evidence and the specific issue that is raised is the question of the presence in Mr. Cauneze's home of small bore shotguns. It is suggested that this was not dealt with in the book of evidence, and that may or may not be correct, but whether it was or it was not, it cannot be suggested that this represents a newly-discovered fact. Mr. Cauneze and his legal team had access to the book of evidence before trial, they had access during trial and Mr. Cauneze has had access at all stages since. Mr. Cauneze's complaint is that it would appear that one of the Garda witnesses, Sergeant Pat O'Connor, did not reference the situation in relation to the small bore shotguns in the course of his statement of evidence in the book of evidence. The shotguns in question are apparently very small bore indeed, so small bore that the indications at trial were that no licence is required in France.

6. It is quite clear from the papers that have been put before us that Mr. Cauneze's legal team was very alive to this issue and on the afternoon of Day 4 of the trial, the Garda witness was cross-examined on the basis that the then accused had been prosecuted at one point for having a toy gun in the garden. The Garda responded and the issue was debated. Be that as it may, it is quite clear that there is nothing newly discovered. Everything that has been canvassed today has been canvassed previously and has been canvassed repeatedly. On previous occasions, and this matter has now gone on so long, it seems on more than one occasion, we drew attention to observations made by Finnegan J in the course of his ex tempore judgment back in December 2011, when he had commented:

"A major difficulty for the applicant on this application is that at his trial, he gave a full and frank account of his recollection of the events of the evening which gave rise to him being charged with the offence. The trial judge remarked that his own evidence provided ample evidence for the jury to convict him, and indeed, that if they believed his evidence, it would require them, in fulling their oath as jurors, to convict him of the offence. The applicant was charged with other more serious offences, and the jury, it would appear,

had no difficulty in accepting that the applicant's account of the evening was correct, in that they found him not guilty of the other more serious offences, but taking him at his word, found him guilty of the offence which is the subject matter of this application. The fact that on his own evidence he is guilty of the offence of which he was convicted presents a considerable obstacle to the applicant proceeding on this application. Added to the circumstances, it is difficult to see how any new or newly discovered fact could be of significance in relation to his conviction."

7. The position, then, is that this Court has now, on a number of occasions, commented that applications brought by Mr Cauneze were vexatious. That is very clearly so in respect of the current application, and as previous applications have been dismissed, so too, this application must be and is dismissed.

8. The application is dismissed.