THE HIGH COURT

JUDICIAL REVIEW

[2022] IEHC 521

[2020 No. 774 JR]

BETWEEN

MARIUS ZILINKSKAS

APPLICANT

AND

THE GOVERNOR OF MOUNTJOY PRISON AND THE SUPERINTENDENT OF BUNCRANA GARDA STATION

RESPONDENTS

JUDGMENT of Mr. Justice Charles Meenan delivered on the 24th day of May, 2022

Background

1. On 24 February 2012, the applicant was convicted in the Dublin District Court of driving without insurance, and of driving under the influence of alcohol arising out of an incident which occurred on 18 January 2010. In respect of his conviction for driving without insurance, the applicant was ordered to pay a fine of €200. In respect of his conviction for driving under the influence of alcohol, the applicant was disqualified from driving for a period of six years and was sentenced to a term of imprisonment of five months. At the time of these convictions, the applicant's stated address was in Saggart, County Dublin.

2. Prior to the aforesaid date, the applicant on 5 November 2011 was arrested for a range of offences, including driving whilst under the influence of alcohol. On 6 June 2012, the applicant was convicted of attempting to operate a motor vehicle whilst under the influence of alcohol, driving without insurance, driving while disqualified, dangerous driving, driving

without a licence, and possession of knives and other articles. In respect of these offences, the applicant was given a suspended sentence of four months' imprisonment and was also disqualified from driving for twelve years, commencing 21 June 2012.

3. The applicant appealed against the conviction of 24 February 2012 to the Dublin Circuit Court. This appeal was listed for hearing on 30 July 2012. The applicant did not appear at the appeal, and so the appeal was struck out and the Circuit Court issued a committal order to the superintendent at Clondalkin Garda Station in respect of the term of imprisonment of five months. The Circuit Court also issued a penal warrant to the superintendent at Bridewell Garda Station in respect of the fine of €200, commanding the superintendent to lodge the applicant in Mountjoy Prison for a period of 25 days in default of payment of the fine.

4. The applicant was arrested on 19 October 2020 on suspicion of drink driving in Buncrana, County Donegal. On being arrested, the applicant's details were recorded and the warrant for his committal was discovered. He was lodged in Mountjoy Prison on 19 October 2020 but was subsequently granted bail.

5. In his Statement of Grounds, the applicant stated that on 1 March 2012 he moved from his apartment in Saggart to an address in Celbridge, County Kildare. Later that year the applicant moved with his partner to Derry where he lived initially with his partner's parents before moving to another address in Derry.

6. Whilst living in Northern Ireland the applicant stated that he had a number of jobs with different employers. In 2020, the applicant stated that he started working for M.R. Concrete, which operates on both sides of the border. Though employed in Northern Ireland, the applicant claims to spend the majority of his working time within this jurisdiction and that he has never sought to avoid the authorities on either side of the border.

7. The applicant stated that, as he changed address on 1 March 2012, he never received the letter informing him of either the date or location of his appeal to the Circuit Court in respect of the convictions of 24 February 2012.

Application for judicial review

8. As referred to above, the applicant was arrested on 19 October 2020 and was lodged in Mountjoy Prison in respect of the sentence of five months' imprisonment imposed by the District Court on 24 February 2012, and affirmed following his non-attendance. The applicant was granted leave by this Court, on 27 October 2020, to seek the following reliefs: -

(i) An order of *certiorari*, quashing the decision of the second named respondent to arrest the applicant on 19 October 2020 on foot of a committal warrant which issued following appeal hearing in the Circuit Court on 30 July 2012;

(ii) An order of prohibition restraining the respondents from incarcerating the applicant on foot of the committal warrant and fines notice which issued following the said appeal on 30 July 2012; and

(iii) A declaration that the delay in arresting the applicant on foot of the committal warrant is unreasonable and unjustified.

Submissions

9. Both the applicant and the respondents rely on the Supreme Court decision in *Finnegan v. The Superintendent of Tallaght Garda Station and Anor.* [2019] IESC 31. In this case the applicant had been charged with an offence of allowing himself to be carried in a mechanically propelled vehicle without the consent of the owner contrary to s.112 (1) (b) of the Road Traffic Act 1961, as amended. The applicant was tried on indictment before Trim Circuit Court and was sentenced to sixteen months' imprisonment. Just over four months into the prison sentence, the applicant absconded from Shelton Abbey open prison. He made no attempts to evade

authorities and, apparently, lived openly. He was located some five years later, and lodged in Wheatfield Prison. He challenged the decision to imprison him on grounds of delay.

10. In giving judgment, O'Donnell J. (as he then was) stated: -

> "32. The starting point of the analysis must be, therefore, that in the case of a committal warrant such as that involved in this case, there has been an adjudication by a court established under the Constitution, and the administration of justice now requires that the individual concerned should be imprisoned. A heavy weight must be accorded to that. Indeed, at the time of the issuance of the warrant after conviction, there can be no countervailing factor: it has already been determined that the administration of justice under the Constitution requires the execution of the warrant, and the detention of the individual. Accordingly, it would normally require a number of substantial factors to be present to outweigh that consideration sufficiently to mean that the warrant should be quashed by a court. That would in my view be in exceptional. A person who escapes from lawful custody, and who is necessarily fully aware of that fact, can normally have no other expectation but that they may be rearrested, required to serve the balance of the sentence, lose remission, and be subject to prosecution for the serious offence of escape from lawful custody. …"

And: -

> "33. Among the factors which may be relevant may be the nature of the original offence, the length of the sentence imposed, the length of the sentence which is served, and the nature of the escape from custody (including whether it was premeditated or planned and executed with others, and whether force was involved). Thereafter, it will also be relevant whether the person resumed a normal life, or attempted to evade capture. It is important to distinguish the different ways in which this factor may be relevant. Living openly at the same address is certainly relevant to the question of culpable delay. It

would not normally be of significant weight on the question of arbitrariness or injustice however unless it could be shown that the relevant authorities were aware of the fact and had refrained from executing, or simply failed to the warrant. It may also be relevant whether the life resumed is a law-abiding one, and whether the person has established family relationships which will be significantly disrupted by his re-arrest and imprisonment. It is impossible to attempt to allocate the weight that should be accorded to each of these factors, but it must be plain that it will normally be necessary that nearly all the factors should weigh heavily in favour of the individual before the presumption in favour of execution of a lawful warrant, the enforcement of which has been interrupted and prevented by the unlawful act of the individual, could be overcome as a matter of constitutional law."

And: -

"35. --- Given the fact, however, that the execution of the orders of a court is normally a requirement of the administration of justice, something substantial and more than delay and inefficiency – however worthy of criticism – is required before it can be said that the point has been reached that a detention in accordance with an otherwise valid warrant is unlawful.

36. If a principle is to be deduced from the case law which is capable of encompassing this case, it is the entirely general one that there must come a point where the interests of justice may lean against the enforcement of a valid warrant. While I agree that there are circumstances where it would be no longer lawful to detain a person who had escaped from lawful custody, I remain of the view that such circumstances must be exceptional, and the considerations leaning against enforcement of a court order must themselves be exigent, so that it could be said that detention pursuant to a warrant is so arbitrary and invidious as to no longer be the administration of justice. ---"

11. The applicant submits that there are a number of factors that weigh against the enforcement of the Order of the Circuit Court. Firstly, it is submitted that a distinction is to be drawn in that *Finnegan* was tried on indictment whereas the applicant was dealt with summarily. Secondly, the applicant, though living in Northern Ireland, was working on both sides of the border and did not seek to evade the authorities.

12. The respondent identified a number of factors which weigh against making the order sought.

Consideration of submissions

13. It seems to me that the Supreme Court decision in *Finnegan* sets out the approach which a court should take in an application such as this. It is clear from the passages of the judgment of O'Donnell J. cited above that there must be significant factors to outweigh the general principle that a person who has been convicted and sentenced by a court established under the Constitution should serve the sentence imposed, notwithstanding a significant lapse of time. A number of factors which *Finnegan* relied upon are not available to the applicant: -

(i) The applicant appealed the decision of the District Court of 24 February 2012 to the Circuit Court. The appeal was listed for hearing in July of that year, but the applicant failed to attend. His reason for non-attendance was that he had moved address and, thus, had not received any court documentation. There is no evidence at all that the applicant made any attempt to make enquiries as to what happened his appeal or take any steps to have it re-instated;

(ii) The applicant was convicted of a serious offence and the District Court imposed a sentence of five months' imprisonment. I cannot see any relevance that in *Finnegan* the applicant was found guilty on indictment whereas in the instant case the applicant was found guilty following a summary trial. In addition, the applicant had already been previously convicted of driving under the influence

of alcohol and, having due regard to his entitlement to the presumption of innocence, was arrested in October 2020 for the same offence;

(iii) An Garda Síochána did take steps to execute the outstanding warrants, but the applicant had moved to Northern Ireland outside the jurisdiction. In *Finnegan* the applicant remained within the jurisdiction. However, though it may be that the applicant in the course of his employment did move backwards and forwards between the two jurisdictions, the fact is that the applicant left the jurisdiction to live in Northern Ireland notwithstanding having been found guilty and given a custodial sentence and failed to either attend or take any step to follow up his appeal.

14. I am satisfied that, taking into account the factors listed above, the applicant is not entitled to the reliefs which he seeks.

Conclusion

15. By reason of the foregoing, I dismiss the applicant's application herein. I will list this matter on the 16th day of June, 2022 to deal with the matter of costs and any ancillary orders that may be required. Any written submissions should be lodged no later than seven days prior to this date.