THE HIGH COURT

[2024] IEHC 430

[Record No. 2021/600 JR]

BETWEEN

SHANE O'SULLIVAN

APPLICANT

AND

DIRECTOR OF PUBLIC PROSECUTIONS

RESPONDENT

JUDGMENT of Mr Justice Barr delivered electronically on the 12th day of July 2024.

Introduction.

1. On 21 October 2019, the gardaí executed a search warrant in respect of a property in Clondalkin, Dublin. The applicant was found, along with two others, on the property. Garda Walsh, who was one of the search party, alleged that he observed the applicant carrying a pink rucksack in his hand. He observed the applicant discarding the rucksack in the back garden.

2. In his statement contained in the Book of Evidence, Garda Walsh states that on searching the rucksack, he discovered two black metallic containers within the bag. Both of the containers contained plastic wraps, with a brown powder substance inside. He also discovered a quantity of green plant material in the rucksack. He further states that when the applicant was brought to his bedroom in the property to get dressed, he removed a quantity of brown powder and plastic wraps containing a white powder substance from his boxer shorts. Garda Walsh states that he found a further quantity of a white powder substance contained within a plastic bag, hidden behind the fridge in the property. He states that the applicant informed him at that time, that the items found during the search, belonged to him.

3. The applicant stands accused of three counts of possession of drugs for sale or supply in respect of quantities of diamorphine, cocaine and cannabis, contrary to s.15 of the Misuse of Drugs Act 1977, as amended.

4. All the offences are alleged to have occurred on the same date, namely 21 October 2019, being one month after the applicant had turned 17 years of age.

5. The applicant submits that due to blameworthy prosecutorial delay in this case, he has now "aged out", and has lost the statutory protections that would have been available to him as a juvenile under the Children Act 2001, as amended (hereinafter "the 2001 Act").

6. In particular, the applicant claims that he has lost the benefit of a jurisdictional hearing under s.75 of the 2001 Act, which, it is submitted, could, and should, have been conducted prior to the applicant attaining his majority. It is further claimed that he has lost the benefit of the protection of anonymity under s.93 of the 2001 Act and the consideration under s.96 of the 2001 Act of detention as a last resort. The applicant also claims that he has lost the mandatory requirement of a probation and welfare report pursuant to s.99 of the 2001 Act.

7. In this application, the applicant seeks an order prohibiting his further prosecution in the matter because, due to culpable prosecutorial delay, he has lost the rights and benefits set out above.

8. In response, the respondent submits that there was no blameworthy prosecutorial delay in the present case. It was submitted that the garda investigation and all necessary steps that were mandated by the circumstances of the case, were carried out in an expeditious manner. Without prejudice to that contention, it is submitted that even if the court were to find culpable prosecutorial delay, when the court carries out the necessary balancing exercise, it favours allowing the prosecution to proceed.

Chronology of Relevant Dates.

9. The dates that are relevant to the consideration of the issue of delay in this case can be summarised as follows: -

15 September 2002	Applicant's date of birth.
10 October 2019	Search warrant obtained.
21 October 2019	Search warrant executed. Applicant is arrested.
08 November 2019	Seized material transported to Forensic Science Ireland ('FSI') for analysis.
17 February 2020	FSI certificate received by gardaí.
22 May 2020	Garda McIntyre directed to prepare suitability report on applicant for Garda Juvenile Diversion Programme.

26 and 27 July 2020	Garda McIntyre speaks to applicant at his grandparents' house and speaks to his grandfather on second date.
15 September 2020	Applicant attains his majority.
14 October 2020	JLO sent report to director of diversion programme.
05 November 2020	Decision of director of diversion programme issued, declaring applicant unsuitable for the programme.
16 January 2021	Garda investigation file submitted to DPP.
17 February 2021	Directions issued by DPP.
09 March 2021	Applicant charged with offences under MDA 1977 (as amended).
20 April 2021	Applicant sent forward for trial to the Circuit Criminal Court.
12 August 2021	Applicant obtained leave to proceed by way of judicial review.

The Evidence.

10. For the purposes of this application, it is only necessary to give a very brief summary of the affidavit and documentary evidence that was put before the court. The primary grounding affidavit on behalf of the applicant, was that sworn on 23 June 2021 by Michael Hennessy, the applicant's solicitor. He noted that on 21 October 2019, the applicant had been arrested in the course of a search of a property in Clondalkin, Dublin. He noted that it was alleged by the gardaí that admissions were made at the scene by the applicant in respect of ownership of the material seized. He noted that the applicant was interviewed on the same date following his arrest; during which interviews, further admissions were made by him.

11. Mr Hennessy noted that on 21 October 2019, Garda Walsh handed the materials that he had seized in the course of the search to Garda O'Neill for the purpose of transporting same to FSI for analysis. These were only brought by Garda O'Neill to FSI some two and a half weeks later, on 08 November 2019.

12. Mr Hennessy stated that the Book of Evidence comprised six witness statements, five of which were from members of An Garda Síochána, with one statement from Dr McLoughlin of FSI. All physical evidence had been gathered as of 21 October 2019.

13. Mr Hennessy stated that the applicant attained his majority on 15 September 2020, meaning that he was 17 years and one month old at the time of his arrest. Mr

Hennessy went on to outline the steps that had been taken after the applicant had attained his majority. These have been set out in the chronology of relevant dates set out above.

14. Mr Hennessy went on to state that without prejudice to any instructions that he might be given in relation to the memo of interview, which was taken during the applicant's detention in Clondalkin Garda Station, which instructions might affect the admissibility of the memo, or otherwise affect what reliance might be placed thereon at any subsequent trial, he stated that the existence of admissions was relevant to the determination of the judicial review and the reliefs sought by the applicant.

15. In particular, he stated that under s.75 of the 2001 Act, a guilty plea was a factor that the court can consider in deciding whether to deal summarily with an indictable offence. He stated that a guilty plea was often decisive in persuading the Children's Court to accept jurisdiction. In the present case, due to the fact that the applicant had "aged out" before the investigation had completed, the applicant was deprived of the opportunity to plead and to have the benefit of a s.75 hearing.

16. Mr Hennessy stated that it was relevant that s.75 of the 2001 Act provided that in deciding whether to try or deal with a child summarily for an indictable offence, the Children's Court shall take account of the age and level of maturity of the child concerned and of any other facts that it considered relevant. In this regard, Mr Hennessy exhibited a number of medical reports, which indicated that the applicant had certain additional needs, in the form of a diagnosis of ADHD, and other conditions. He stated that the applicant had attended with the CAMHS service as a youth. He was currently taking various forms of psychotropic medication, which were outlined in the affidavit.

17. Mr Hennessy noted that the applicant had no previous convictions. He was currently employed with a company engaged in mechanical engineering work. He had been offered an apprenticeship. He exhibited a copy of a letter from the applicant's current employer.

18. Mr Hennessy stated that being an experienced criminal law solicitor, it was his considered view, and experience that in the particular circumstances of this case, it was likely that jurisdiction would have been accepted by the Children's Court.

19. Mr Hennessey went on to state that due to the unexplained and blameworthy delay on the part of the prosecuting authorities, the plaintiff had lost the benefit of a number of

protections that would otherwise have been available to him under the 2001 Act. These are set out at paras. 19 and 20 of the affidavit.

20. An affidavit was sworn by Garda McIntyre on behalf of the respondent on 13 June 2022. He stated that he was a Juvenile Liaison Officer, working as part of the Juvenile Liaison Programme, operated by the gardaí pursuant to the provisions of the Children Act 2001. He stated that the objectives of the scheme were to attempt to prevent children and juveniles obtaining a criminal conviction. To that end, as long as the juvenile was prepared to accept responsibility for the offending behaviour and agreed to be cautioned and, where appropriate, agreed to certain terms of supervision, they could be considered for inclusion in the programme. A report would be prepared by the JLO following a meeting with the juvenile and his guardian; following which, a decision would be made by the director of the diversion programme.

21. Garda McIntyre stated that he was tasked with preparing a report on the suitability of the applicant for admission to the JDP. To that end, he made numerous attempts to engage with the applicant and with his family. However, he had difficulty locating the applicant, as he had moved from his original address and had taken up residence with his grandparents. Following a number of unsuccessful visits to his former address, Garda McIntyre was informed that the applicant was living with his grandparents.

22. Garda McIntyre stated that when he met with the applicant and his grandmother. He was informed that the applicant was determined to go to court and was not interested in receiving a caution. He stated that he submitted his report to the director of the JDP on 14 October 2020.

23. An affidavit was sworn by Garda Mark Walsh on 12 July 2022, in which he gave an account of the search of the property that occurred on 21 October 2019. He stated that a certificate of analysis was issued by FSI on 17 February 2020, which confirmed that the substances seized consisted of diamorphine, cocaine and cannabis, which are all controlled drugs under the MDA 1977.

24. Garda Walsh stated that it was his understanding that the applicant was contacted by a JLO with a view to determining his suitability for admission to the JDP, but that the applicant indicated that he did not want to be admitted to the programme and that he wanted to go to court. He stated that on 05 November 2020, he ascertained that the director of the JDP had deemed that the applicant was unsuitable for inclusion in the

programme. In these circumstances, a garda investigation file was required. He stated that the file was completed and submitted to the DPP on 16 January 2021. A direction to prosecute the applicant on indictment issued on 17 February 2021. The applicant was arrested and charged on 26 February 2021. He denied that there had been any prosecutorial, or other unwarranted investigative delay.

25. On 13 January 2023, the applicant swore an affidavit in which he gave a response to the affidavits that had been sworn by Garda McIntyre and Garda Walsh. His recollection was that in September 2020, Garda McIntyre had called to the house where he was residing with his grandparents. He stated that this visit had occurred at approximately 23.00 hours.

26. The applicant stated that Garda McIntyre asked him "Do you want to take it to court, or forget about it?" He stated that he knew that the alleged offence was serious and that he could not just "forget about it". He stated that he did not understand what Garda McIntyre meant by this. He stated that he was aware that there were two options, but he was not sure what "forget about it" meant.

27. The applicant stated that Garda McIntyre did not mention a JLO. The applicant stated that he "picked the court thing and forgot about it". He stated that at no time, did not understand that that interaction had meant that he was being offered a JLO caution. He went on to state that he was not certain what words had actually been used by Garda McIntyre, but he declined what he was offering; mostly because he did not know what Garda McIntyre was offering him.

28. The applicant stated that his grandmother was in the kitchen and that he was by himself when Garda McIntyre spoke to him on that occasion. He stated that he had no parent or guardian present during the conversation to explain what was happening. He stated that he had been offered a JLO once before in 2018 or 2019, when he was around 16 years of age. He recalled that he had had to sign a form on that occasion. It related to a loitering charge. In relation to the offences with which he was currently charged, he stated that he was not offered a JLO by Garda McIntyre. He did not refuse a JLO. He stated that he did not sign anything in respect of a JLO. He stated that if he had been offered a JLO, he would have taken it.

29. The applicant stated that he did not receive any advice from a solicitor at the time when Garda McIntyre had spoken to him. He stated that it was his belief that this was the

only occasion when Garda McIntyre called to his house and spoke to him in respect of this matter. He did not believe that Garda McIntyre had spoken to his family about the matter. He did not believe that any other family members had received contact from Garda McIntyre. He pointed out that Garda McIntyre had not set out any specifics in relation to the dates, times, or locations, or purported attempts to engage with him and his family in respect of his disinterest in accepting a caution, which he did not accept. He stated that Garda McIntyre attended at his house only once, as described above. The other time he and Garda Walsh interacted was when he was charged by Garda Walsh.

30. A further affidavit was sworn by Garda McIntyre on 09 March 2023, in which he set out in more detail, the events which had transpired when he called to the applicant's grandparents' house on 26 July 2020. Having outlined his difficulty in locating the applicant prior to that date, he stated that he eventually got to speak with the applicant, together with his grandmother, Ann O'Sullivan, on that date.

31. Garda McIntyre gave a detailed account in the affidavit of his dealings with the applicant on that occasion. He stated that he explained to the applicant and his grandmother, that he had been tasked with the preparation of a suitability report in relation to the drugs offences that were detected on foot of the search carried out in October 2019.

32. Garda McIntyre stated that he explained the workings of the Juvenile Diversion Programme to both the applicant and his grandmother. He stated that he indicated to them that if the applicant kept out of trouble and stayed away from drugs and drug dealing, that he may be able to seek that he be cautioned under the JDP, in *lieu* of a prosecution.

33. Garda McIntyre stated that the applicant was not interested in being considered for the JDP. He stated that the applicant was adamant that he did not wish to seek legal advice. The applicant stated on a number of occasions that he wanted to go to court for the offences. When asked for an explanation for this attitude, he did not give any explanation. Garda McIntyre stated that the applicant's grandmother, explained that it was because he was being accused of being a "rat" and of giving information to the gardaí after he was arrested. He stated that the applicant then became annoyed with his grandmother and told her to "shut up".

34. Garda McIntyre stated that he spoke at length with the applicant and with his grandmother. He inquired whether the applicant owed money, or if he was on drugs. The applicant and his grandmother indicated that he was not on drugs and that he did not owe money to anyone. The applicant's grandmother stated that the applicant was not going to change his mind. Garda McIntyre stated that both the applicant and his grandmother signed a form accepting responsibility for the offences. However, he did not exhibit that form.

35. Garda McIntyre stated that following that interaction, he returned to the house on the following day to explore any options that would be in the applicant's best interests. On that occasion, he spoke with the applicant's grandfather, Mr Tommy O'Sullivan, who informed him that the applicant was determined to go to court. He outlined certain reasons why the applicant had adopted that stance.

36. Garda McIntyre stated that he had been a JLO for 19 years. He had always strived to assist young people, with the objective of diverting them from crime. He stated that he had never presented the cautioning process in terms of "Go to court, or forget about it". He stated that he did not use that terminology. He rejected the applicant's averments in that regard. He stated that he believed that the applicant was fully aware that he was not offering him a JLO caution at the time. He believed that the applicant was fully aware of what he was doing in rejecting the prospect of consideration and had reasoned his decision in his own mind.

37. Garda McIntyre denied that he had called to the applicant's residence at 23.00 hours. He stated that his rostered tour of duty was 07.00 to 19.00 hours. While he was not sure of what exact time he had called to the applicant's grandparents' house, he stated that he did not normally call to houses after 21.00 hours. Garda McIntyre stated that when he submitted his report to the director of the JDP on 14 October 2020, he had highlighted all of the foregoing matters.

38. Garda McIntyre swore a further brief supplemental affidavit on 14 October 2023, in which he corrected the dates that had been given for the visits to the applicant's grandparents' house, which had been incorrectly stated in his previous affidavit as having occurred in May 2020, whereas the visits had occurred on 26 and 27 July 2020.

39. Finally, the applicant swore a further supplemental affidavit on 19 March 2024, in which he stated that while a lot of time had passed since 2020, his recollection was that he

had not signed anything in respect of a JLO. He stated that he may have signed a form in respect of going to court in relation to the alleged offence. He did not fully recall, but indicated that he may have signed a form of that nature. He stated that at no time did he understand this to mean that he was refusing a JLO caution.

40. He stated that on the previous occasion, when he had been offered, and had accepted, a JLO in 2018/2019, the words JLO had been used on the form itself. He stated that if a JLO had been offered to him, his grandmother would have encouraged him to have taken it. He stated that his grandfather died in October 2020 and therefore could not speak to the averments set out by Garda McIntyre in relation to his second visit to the property. He clarified that when Garda McIntyre had called to the house in 2020, he had spoken to him on the doorstep, while his grandmother was in the kitchen.

41. That concludes the affidavit evidence in the case. The court was furnished with the documents exhibited in the affidavits. The court was also furnished with a copy of the Book of Evidence in this case.

Has there been Blameworthy Prosecutorial Delay?

42. The applicant submitted that there had been culpable prosecutorial delay in this case, which had led to the applicant "aging out" during the investigation process, such that he had lost many of the benefits that would otherwise have been available to him under the 2001 Act; in particular, he had lost the benefit of anonymity and the opportunity to have a hearing pursuant to s.75 of the 2001 Act.

43. It was submitted that it was well established that in cases involving the investigation of suspected criminal offences by juveniles, there was a particular duty on the prosecutorial authorities to move with expedition: see *Donoghue v DPP* [2014] 2 IR 762, at para. 26.

44. It was submitted that there were several periods of blameworthy prosecutorial delay in the investigation in this case. There had been a period of two weeks between the date of seizure of the material and the delivery of same to FSI for analysis. Secondly, it had taken three months for FSI to test the material seized in the search. Thirdly, Garda McIntyre had been tasked with preparing a report on the suitability of the applicant for inclusion in the JDP in February 2020; yet he had not produced his report until October 2020, by which time the applicant had aged out in the middle of the previous month. It

was submitted that no explanation had been advanced as to why the steps taken in respect of the JLO did not occur simultaneous to the FSI testing, or shortly thereafter.

45. It was submitted that the investigation in this matter was a relatively straightforward one. All the evidence, bar the FSI certificate, had been collected on the date of the alleged offence. It was alleged that the applicant had made admissions at the scene and during interview, when he was arrested on the day of the search. It was submitted that as of 17 February 2020, with the receipt by the gardaí of the FSI certificate, no further evidence needed to be gathered. There remained a period of seven months, before which the applicant attained his majority, during which time, matters could have been progressed and the applicant could have been charged with these offences, if he was being refused admission to the JDP. However, that had not occurred.

46. It was submitted that there was no consciousness or urgency in ensuring the prosecution of the applicant prior to his attaining his majority. It was submitted that in all the circumstances, there was clear evidence of culpable prosecutorial delay.

47. In response, it was submitted on behalf of the respondent, that one had to have regard to the fact that on the date of the alleged offences, the applicant was 17 years and one month old. This meant that the gardaí and the prosecution authorities only had eleven months within which to conclude the investigation and take all necessary steps, prior to the applicant attaining his majority.

48. It was submitted that one had to look at the matter in the round, rather than submit each of the investigatory steps to some form of minute analysis in terms of time: see *DPP v Furlong* [2022] IECA 85; *LE v DPP* [2019] IEHC 471; *TG v DPP* [2019] IEHC 303.

49. It was submitted that the court should discount two periods during which the matter was outside the hands of the investigating gardaí; namely, the three month period while the material was being analysed by FSI. It was submitted that FSI was a totally independent body, over which the investigating gardaí had no control. It was essential that they obtain a certificate in relation to the material that had been seized in the course of the search. They had to await production of that certificate before proceeding with the investigation.

50. Secondly, it was submitted that the gardaí were obliged to submit the matter to the JLO and allow him time to prepare a report on the suitability of the applicant for

inclusion in the JDP; and they had to await the ultimate decision of the director as to whether the applicant would be included in the programme. If the applicant was included in the programme, that was the end of the matter, there would be no prosecution. It was submitted that if these two periods of time were excluded from the equation, there could be no question that the investigating gardaí, or the DPP, had been guilty of any culpable delay. It was submitted that in these circumstances, the court should refuse the reliefs sought by the applicant.

Conclusions.

51. There have been a great many cases on the principles that should be adopted when considering an application to prohibit a trial on the basis that the accused has lost the benefits of being tried as a juvenile, due to culpable prosecutorial delay. It is not necessary to state all the principles again.

52. In the present case, the parties were agreed that the following legal principles were generally applicable: first, it was accepted that there was a duty on gardaí investigating suspected crimes committed by minors to carry out their investigation with expedition. This has been stated in a large number of cases, see in particular *Donoghue v DPP*.

53. Secondly, it was accepted that there is no obligation on the prosecution authorities to unrealistically prioritise cases involving minors: see *Daly v DPP* [2015] IEHC 405. Thirdly, the parties were agreed that each case had to be examined on its own facts. Fourthly, the nearer an accused was to his 18th birthday at the time of commission of the alleged offence, the more difficult it would be for the investigating gardaí and the prosecuting authorities to get the matter into court prior to attaining his majority. Fifthly, where the court finds no culpable prosecutorial delay, it need not embark on the balancing exercise and the reliefs would be refused.

54. Turning to the facts in the present case, the court must consider whether a period of just under eleven months was sufficient to allow the investigation to be completed, to obtain the directions of the DPP, and to have the matter brought before court for the purposes of a formal charge and a s.75 hearing, prior to the applicant attaining his majority.

55. The court accepts the submission made by Mr Kelly BL on behalf of the respondent, that the court should not engage in some form of overly detailed examination

of the time taken by gardaí at each stage of the investigation process. Instead, the court must look at the investigation in the round, to determine whether, given the complexity of the investigation and any other relevant circumstances, it can be said that there was blameworthy prosecutorial delay. This approach was endorsed by the Court of Appeal in the *Furlong* case: see judgment of Birmingham P at paras. 21 *et seq.*

56. In relation to Mr Kelly's further submission, which was to the effect that the court should discount the periods that elapsed while (a) the materials were being tested by FSI, and (b) while the issue of the applicant's suitability for the JDP, was being considered; I am satisfied that he is only partly correct in this submission.

57. I accept that in a case involving the seizure of substances suspected of being controlled drugs, the gardaí have to send the material seized to FSI for analysis. Whether any criminal offence has been committed, will depend entirely on the analysis of the seized material. Accordingly, I accept the submission that the gardaí were obliged to send the material to the FSI and were obliged to await the results of their analysis before proceeding with the investigation.

58. The FSI is an independent forensic laboratory. They do forensic testing on all sorts of materials that are seized as part of garda operations. However, they are independent of An Garda Síochána. Accordingly, I hold that the time during which the material was with the FSI laboratory for testing, in this case being roughly three months, cannot be counted as delay on the part of the gardaí in the investigation of the suspected offences in this case.

59. I do not go so far as to say that time spent in the FSI laboratory, can never be counted as blameworthy prosecutorial delay. If material had been sent to them, without any result or communication within a reasonable time, such that the material was with FSI for an inordinate length of time for testing, such as for in excess of six months; in the absence of a very good excuse, that may be counted as blameworthy prosecutorial delay.

60. However, as that does not arise in this case, I would leave over to consideration in another case the formulation of definite timelines, beyond which blameworthy prosecutorial delay could be said to arise, where the material is held for an inordinate period by FSI.

61. In the present case, the material was with FSI for approximately three months. The gardaí could do nothing while they awaited the certificate from the laboratory. When

one considers that FSI have to deal with many different types of material for forensic testing, some of which might have to be analysed as a matter of urgency; and having regard to the fact that a substantial quantity of material was seized in the search that was carried out in this case; and in the absence of any evidence of what might be a reasonable time to allow for testing of such materials; I am not prepared to find that the time spent analysing the seized material in this case was so inordinate as to constitute blameworthy prosecutorial delay.

62. Once the certificate was forthcoming from FSI, the gardaí then had to refer the matter to the relevant authorities for consideration of whether the applicant should be admitted to the JDP provided for under the 2001 Act.

63. While that function is separate from the investigating team, it is nevertheless carried out by members of An Garda Síochána. They know, or must be presumed to know, that consideration of the suitability of the suspect for the JDP, is a matter that must be concluded with expedition.

64. Under the JDP, the juvenile must accept responsibility and must agree to the imposition of a caution and/or supervision, if admitted to the programme. This involves meeting with the juvenile and his or her guardian.

65. In the present case, it is accepted that the JLO, Garda McIntyre (as he then was), met with the applicant at his grandparents' house on 26 July 2020. While there is controversy between the applicant and Mr McIntyre in relation to what occurred at that meeting, there is a consensus that the meeting took place. There is further consensus that the upshot of that meeting was that the applicant wanted the matter to go to court. There is dispute between the parties as to whether the applicant was aware that by so doing, he was turning down the opportunity of being considered for inclusion in the JDP. While the applicant does not accept that Mr McIntyre called to the house on the following day, 27 July 2020; he is not in a position to expressly deny that that took place, as it is common case that Mr McIntyre did not speak with the applicant on that occasion.

66. It is not necessary for me to resolve the conflict of evidence as to whether the JLO put it to the applicant that he consented to being considered for inclusion in the JDP in certain circumstances, or whether he merely suggested that they could "forget about it", as alleged by the applicant. I do not have to resolve this conflict, as it is immaterial to the issue of delay.

67. I am satisfied that Garda McIntyre (as he then was) approached his job in a conscientious manner. His making a second visit to the applicant's grandparents' house, is strongly indicative of his being concerned about the refusal by the applicant on the previous day, to be considered for inclusion in the JDP.

68. While it is somewhat difficult to understand why, if Garda McIntyre had received a definitive "no" on his second visit to the property on 27 July 2020, it took him so long to issue his report on 14 October 2020, by which stage the applicant had "aged out" in the previous month; I am not satisfied that his delay in so doing constitutes culpable prosecutorial delay of such magnitude as to warrant prohibiting the applicant's trial. I am not satisfied that even if the report from the JLO had issued sooner, the investigation could have concluded and the directions could have been obtained from the DPP, prior to his attaining his majority on 15 September 2020.

69. It is well settled that the nearer a juvenile is to his majority at the date of the alleged commission of the offence, the less likely it will be that the investigation of the matter, can be concluded and the matter brought to court, in time to enable him to avail of the advantages that are available to juveniles.

70. Looking at cases with similar time constraints is not particularly helpful, because the facts of each investigation may differ considerably. In the *Furlong* case, the alleged offence was committed five days after the suspect turned 17 years. While the decisions in the High Court and the Court of Appeal differed in relation to the balancing exercise that had to be carried out, both courts were agreed that there was culpable prosecutorial delay. However, that case differed quite considerably from the present case. In *Furlong*, the investigation was relatively straightforward. It involved an assault, when the accused had thrown a bottle at a security guard, but had missed him and instead had struck an elderly lady. The three main prosecution witnesses were the elderly lady, the security guard and an independent witness. The events were also captured on CCTV.

71. In that case it was held that the delay that had occurred in obtaining the statement from the security guard, had been inexplicable. The incident had occurred on 22 May 2017. Birmingham P held that it was not unrealistic to hold that the investigative phase could have been concluded by Halloween of that year. That would have allowed ample time for a referral to be made in respect of possible inclusion in the JDP and for a decision to issue

from that office within the calendar year. That would still have left a number of months prior to the accused attaining his majority.

72. In *TG v DPP*, Simons J had to consider whether there was culpable prosecutorial delay where the applicant had turned 17 years old on the date of the alleged incident. The incident had occurred on 29 August 2016, with the applicant reaching his age of majority on 29 August 2017. In that case, Simons J held that there had been no culpable prosecutorial delay, due to the fact that the matter had not been concluded and brought to court prior to the applicant attaining his majority.

73. However, that case was very different to the circumstances in the present case. In the *TG* case, the applicant had been one of a number of youths detained in Oberstown Detention Campus, who had engaged in a riot and had taken up a position on a roof of one of the buildings in the detention centre. Acts of criminal damage and arson had been carried out by certain members of the group. A very large number of statements had to be obtained as part of the investigation of the separate incidents that occurred during the course of the riot. There was also extensive CCTV footage to be reviewed. In these circumstances, Simons J held that there was no culpable prosecutorial delay in failing to have the matter brought to court within the one year period that was available.

74. In *Cash v DPP* [2017] IEHC 234, the applicant was accused of having committed an offence on 17 July 2014, when he was 17 years and nine days old. The court refused to hold that there was culpable prosecutorial delay from the date of the offence up to 02 February 2015, due to the fact that the applicant had run away from the gardaí and had absconded for a considerable period. He was only arrested on foot of a bench warrant, some considerable time later. While the court found that there was prosecutorial delay from 02 February 2015, up to the date of charge on 07 January 2016, with the applicant having reached his majority on 08 July 2015; the judge held that the delay after that date was not relevant. The delay that had occurred prior to that time, was held not to be significant culpable prosecutorial delay, and on that basis he refused to prohibit the trial of the applicant.

75. In the present case, I am satisfied that there was no undue delay in getting the material to FSI. The gardaí cannot be blamed for the following period of three months, while the material was being analysed. Thereafter, they only had approximately seven

months, within which to refer the matter to the JDP for consideration; and to conclude their investigation and to obtain directions from the DPP.

76. I am satisfied that given the seriousness of the crime, which involved seizure of a substantial quantity of different classes of controlled drugs, there was no culpable prosecutorial delay in this case. Of course, one could always find that individual steps may have been taken a little quicker than was the case; but that is not the test. Looking at the matter in the round, from the date of arrest on 21 October 2019, to the date when the applicant attained his majority on 15 September 2020, I am satisfied that there was no culpable prosecutorial delay in this case. Therefore, it is not necessary for the court to consider the second question, being the balance of justice, as the applicant has not met the first hurdle.

77. Accordingly, I refuse the reliefs sought by the applicant in his notice of motion.

78. As this judgment is being delivered electronically, the parties shall have two weeks within which to furnish brief written submissions on the terms of the final order and on costs and on any other matters that may arise.

79. The matter will be put in for mention at 10.45 hours on 30th July 2024 for the purpose of making final orders.