

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

IN THE MATTER OF AN APPLICATION BY PATRICK NELIS FOR LEAVE TO
APPLY FOR JUDICIAL REVIEW

O'HARA J

Introduction

[1] This application for leave to apply for judicial review is refused. The case involves a challenge to the decision of the Parole Commissioner on 30 May 2013 to revoke the applicant's licence on the basis that his post release conduct indicates that he poses an increased risk of harm to the public which can no longer be safely managed in the community. It also involves a challenge to the provision of information about the applicant to the Parole Commissioner by the Department of Justice - it is being contended that this information contained significant inaccuracies prejudicial to Mr Nelis.

[2] The applicant was sentenced on 7 November 2012 to 6 months' custody and 18 months' supervised licence on charges of dishonestly making a false representation and dishonestly using electricity. The plea was complicated by the fact that he had earlier pleaded guilty to more offences, then engaged a new legal team and vacated his guilty plea. In the end he pleaded guilty to some but not all of the offences with the others being left on the books. No new pre-sentence report was written after the original guilty plea.

[3] Mr Nelis was released from custody on 7 November 2012 presumably having served the equivalent of his sentence on remand. His licence was revoked on 31 May 2013 on the basis of fresh charges of fraud and attempted fraud. The commissioner who reached the decision to revoke the licence did so by reference to various documents submitted to him. His decision states that he proceeded on the assumption that the information therein is accurate. In fact the information was

inaccurate in that it referred to him having been convicted of four charges of making false representations (the original guilty plea) instead of one (the ultimate guilty plea). It also referred to the total amount involved being £154,000 or thereabouts which is now significantly in dispute and to counterfeit euro notes worth about £29,000 which is not correct.

[4] Finally, the commissioner's decision refers to other matters which were not taken into account by the commissioner, namely electricity and cannabis supply. The role of the commissioner in May was an important but limited one. Contrary to the applicant's contention the commissioner did not revoke the applicant's licence - the commissioner made a recommendation to the Department of Justice which the Department chose to accept. That recommendation was not and did not have to be the result of an intensive scrutiny of the available materials. Such a scrutiny may have revealed the errors referred to above although the substantive effect of the errors is limited.

[5] The applicant also challenges the recommendation of 31 May to the extent that the suggested ongoing offending was exaggerated and/or unfairly described to his detriment. This is an issue of greater significance, potentially at least, because it is the conduct on licence which is most relevant. That conduct as set out to the commissioner was wrong in that the applicant had not been arrested for conspiracy to supply Class A drugs; rather he was arrested for encouraging others to conspire to supply. I do not regard that as a matter of substance. A second aspect relied on by the applicant is at paragraph 12 of the May decision which refers to him failing to comply with his licence requirements and in particular the fact that he has been prosecuted for a number of offences when in fact he was not suggested to have breached his licence requirements other than by re-offending. Again, I do not regard that as a matter of substance and I am surprised by the strength of the language in the subsequent commissioner's decision of 5 September 2013 which led to the applicant's release.

[6] The fact that the applicant was released on 5 September leads on to an even bigger stumbling block for this application for leave. The applicant seeks a declaration that the time spent in custody from 31 May to 5 September should count against any sentence which is imposed on him if he is convicted on the fresh charges. It is not appropriate or possible to grant leave on that challenge for a number of reasons. First, that is not a matter for the Parole Commissioner. Second, that is not a matter for which the Department of Justice is responsible - at least at this stage it is for the Prison Service. Third, the proceedings were started in August to October 2014 long after the appropriate time had expired. Fourth, there is no good reason to extend time. Fifth, in the alternative the application is premature. The applicant's trial on the further offences is not listed until November 2014. Only if he is convicted and sentenced to a period of imprisonment will time spent in custody from 31 May to 5 September become an issue.

[7] I therefore dismiss the application for leave on all issues. I accept that there were some limited errors in the information supplied by the Department of Justice to the Parole Commissioner but I do not regard those errors as having been so significant as to undermine the decision to recall the applicant. Even if they were, the application is simultaneously out of time and premature.