

Neutral Citation No: [2018] NIQB 28

Ref: McB10616

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

Delivered: 22/03/2018

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

**IN THE MATTER OF AN APPLICATION BY JAMES CARLIN
(APPLICANT FOR BAIL)**

McBRIDE J

Introduction

[1] This is an application for bail by the applicant. The question which arises is whether bail should be granted in circumstances where the applicant's licence in respect of previous offending has been revoked, he has been recalled to prison and his licence is due to expire in a few months' time.

[2] The applicant was represented by Mr Luke Curran of counsel and the prosecution was represented by Ms Kennedy of counsel. I am grateful to all counsel for their well-researched and ably presented skeleton arguments which were of much assistance to the court.

Background

[3] The applicant has been charged with using a false instrument with intent, using a motor vehicle without insurance, driving whilst disqualified and going equipped for theft on 22 February 2018.

[4] The prosecution's case is that on that date at approximately 21:50 hours, police whilst on mobile patrol on the Upper Newtownards Road, Belfast, observed a white transit van travelling city wards. They followed it and when it drove into a nearby filling station they spoke to the driver who identified himself as the applicant. Checks revealed that he was a disqualified driver. Police also established that the vehicle's registered plates did not correspond with the vehicle's chassis number. A search of the vehicle revealed 3 sets of bolt cutters, 2 pairs of gloves and a hat. The applicant was arrested and at interview he admitted he was a disqualified driver without insurance. He stated the bolt cutters were to cut wire from scrap metal he collected. He further stated he did

not know the vehicle had false plates and that he had bought the vehicle the day before. He was unable to provide any paperwork confirming the purchase of the vehicle. The applicant has 302 previous convictions including a suspended sentence imposed in 2017 for having no insurance, driving while disqualified and being unlawfully at large.

[5] Prior to his arrest the applicant had been released from prison on licence. This was part of a determinate custodial sentence and the licence is due to expire in mid-June 2018.

[6] The applicant's first application for High Court bail was listed for hearing on 2 March 2018. It was adjourned until 12 March 2018 for the Probation Board of Northern Ireland to provide further details about the applicant's engagement with them.

[7] On 1 March 2018 the defendant's licence had been revoked and he was recalled to prison. This was not known to the court at the date of the initial bail hearing on 2 March 2018 and only came to its attention on 12 March 2018.

[8] It is understood that the applicant, given that his licence is due to terminate mid-June 2018, is eligible to apply to the prison Governor for pre-release home leave from 20 May 2018 onwards. The Parole Commissioners also will make a determination whether the applicant can be re-released prior to his sentence licence expiry date, in accordance with the Parole Commissioners rules.

Issue to be determined

[9] The issue to be determined is whether the court should entertain an application for bail in circumstances where the applicant's release date is only a few months hence.

Legal Background

[10] In *Re BG's Application for Bail* [2013] NIJB 43 McCloskey J held at paragraph 17:

"I consider that, fundamentally there is an inextricable link between bail and liberty ... the court should not exercise its discretionary power to grant bail in circumstances where this will not operate to confer liberty on the accused person concerned, immediately or in the foreseeable short term."

[11] The reasons why the court should only grant bail when it confers liberty immediately or in the foreseeable short term are because:-

- (i) The decision to grant bail, as McCloskey J stated at paragraph 15, involves “a series of evaluative and predictive judgments. With the passage of time the factual matrix is liable to undergo evolution and significant alteration.” The currency of a decision on bail will, as time passes, become out of date and out of touch with the actual material facts which may exist as of the date the bail is to take effect.
- (ii) Secondly, the inherent jurisdiction the court exercises in bail, being based upon a writ of habeas corpus, is by its nature and purpose designed to secure the immediate liberty of the citizen, and
- (iii) Thirdly, this approach is not in contravention of Article 5(3) of the European Convention on Human Rights as the accused can pursue a fresh application in altered circumstances.

[12] The question about whether to grant bail when an accused’s licence has been revoked has been considered in two other cases in this jurisdiction, namely *Re McGlinchey* [2013] NIJB 5 and *In the matter of Application by Robert Lindon Scott* (Unreported). Stephens J in *Re McGlinchey* adopted the approach of McCloskey J. He further stated that in situations where the Prison Service was contemplating temporary release it was appropriate that the Prison Service should deal with that issue first in time and thereafter if the prisoner was released the court could then consider the grant or refusal of bail. It was his view that this sequencing was correct based on principle and practice. On a practical level he noted that the Prison Service would have more up-to-date information in respect of the applicant and would also have access to additional information which the court may or may not have access to. As a result the Prison Service’s decision on temporary release would have more “currency” than an earlier decision made by the court in respect of bail.

[13] In *Re Scott* Keegan J followed the reasoning of both McCloskey J and Stephens J. She refused the application on the basis that bail would not have had immediate effect and also on the basis that another decision making body such as the Parole Commissioners or Northern Ireland Prison Service should, as a matter of sequencing and as a matter of principle and practice make their decision before the bail court was asked to make any decision in respect of bail.

Conclusion

[14] I respectfully adopt the approach taken by McCloskey J that bail should not be granted unless it confers liberty “immediately or in the foreseeable short term”. In the present case the licence is not due to determine until mid-June 2018 which is some three months away. I am satisfied that any decision I would make now would be outdated by that time and the material circumstances on the ground may be very different. In addition more recent and additional materials would be available to inform decision making about whether to grant or refuse bail. When McCloskey J referred to “foreseeable short term” I find that this must be measured in terms of

days or at most a week or perhaps up to a maximum period of 10 days. This is because the court in the exercise of its inherent jurisdiction should only make orders which are effective. I consider that an order granting liberty which is delayed by 3 months is not one which can be said to be effective in securing the liberty of the citizen as originally envisaged by the writ of habeas corpus, which is the basis of the court's inherent jurisdiction. Secondly I find that the facts relevant to the grant of bail can change very quickly and therefore a decision in respect of bail should be made as close as possible to the time when bail will be perfected. This means that bail should be capable of being perfected within days up to a maximum period of 10 days.

[15] I further note that McCloskey J in BG at para 19 in obiter comments relating to possible future legislative changes opined that a bail order not perfected within a short definite period, for example one week should lapse. This dicta, I find supports the view that when McCloskey J referred to "foreseeable short term" he was referring to a period of days and not months.

[16] In respect of the submission that the applicant may be entitled to home release as early as 20 May 2018 I again find this not a date which is sufficiently proximate to be held to be in the foreseeable short term. Further, in terms of sequencing, for the reasons set out in McGlinchey I am satisfied that the Northern Ireland Prison Service should first make the decision to grant home release and thereafter, if granted, the applicant could then apply for bail.

[17] Further in the event the Parole Commissioners re-release the applicant, he can then re-apply for bail in respect of the present alleged offending.

[18] For all these reasons I dismiss the application. I grant legal aid taxation of the applicant's costs.