

Neutral Citation no. [2003] NICA 33

Ref: CAMC3981

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

Delivered: 12/9/03

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

BETWEEN:

A WALLACE

(Complainant) Respondent

-and-

MARTIN STOKES

(Defendant) Applicant

Before: Carswell LCJ, Nicholson LJ and Campbell LJ

**CAMPBELL LJ**

*The application*

[1] This is an application under Article 146(7) of the Magistrates' Courts (NI) Order 1981 for an order directing a resident magistrate to state a case within a specified time.

[2] The application is brought outside the period of 14 days from the date of the refusal or failure of the resident magistrate to state a case, as required by Order 64 rule 1 of the Rules of the Supreme Court, and this Court is asked therefore to exercise its power to extend time.

*The facts*

[3] Martin Stokes ("the applicant") appeared at Strabane Magistrates' Court on 28 June 2002 charged with a number of offences under the Road

Traffic (Northern Ireland) Order 1981, at the prosecution of the respondent, a chief inspector of police. He was convicted of three offences including the offence of fraudulent use of a certificate of insurance contrary to Article 174 (2) of the Order.

[4] In the course of hearing the evidence on this charge the resident magistrate ruled that once the prosecution had established a prima facie case the burden of proof passed to the applicant to prove that on the balance of probabilities there had been no fraudulent use of an insurance certificate.

[5] On 28 June 2002 the applicant's solicitor lodged notice of appeal to the county court against conviction and sentence in respect of each of the offences. This appeal currently stands adjourned.

[6] The applicant was dissatisfied with the decision of the resident magistrate on the issue of onus of proof on the charge of fraudulent use of insurance and his solicitor applied to the resident magistrate, by notice dated 8 July 2002, to state a case for the opinion of this Court.

[7] The Clerk of Petty Sessions informed the solicitor, in a letter of 15 August 2002, that the resident magistrate had decided to grant the application. A further letter dated 23 August followed, stating that the resident magistrate had been unaware of the notice of appeal and that he had revoked his earlier decision as it was void for mistake.

[8] In his response the applicant's solicitor drew the attention of the Clerk of Petty Sessions to Article 146(8) of the Magistrates' Courts Order which provides:

"Where an application for a case to be stated under this Article has been granted any other right of the applicant to appeal against the decision shall cease".

He requested the resident magistrate to reconsider his decision on the ground that once the application to state a case was granted the applicant's right of appeal to the county court had ceased.

[9] The resident magistrate treated this as a request for a certificate of refusal and gave a certificate of refusal on the ground that the application was frivolous within the terms of Article 146(4) of the Magistrates' Courts Order. He gave as his reasons the history that has been outlined and that as the county court was now seised of the matter and the appeal was listed for hearing on 11 September 2002 the correctness of his decision was now academic.

## *Delay*

[10] The applicant was advised to apply for judicial review of the decision by the resident magistrate to refuse to state a case. An application was made for legal aid and initially this was granted for the purpose of obtaining counsel's opinion. Following this full legal aid was granted and an Order 53 statement, dated 27 November 2002, was lodged.

[11] On 28 January 2003 the application for leave to apply for judicial review was dismissed by Kerr J. on the ground that an application could be made to this court for an order under Article 146(7) of the Magistrates' Courts Order.

[12] An application for legal aid for this purpose was lodged on 29 January 2003 and granted on 21 March 2003. The notice of motion seeking an order under Article 146(7) was issued on 16 April 2003.

[13] Mr Valentine, who appeared for the respondent, objected to an extension of the period of time provided for by Order 64 rule 1 being granted. He referred to the length of the delay and to the considerations for an extension of time referred to in *Davis v Northern Ireland Carriers* [1979] NI 19 at page 20. Mr Valentine accepted that the application for a case stated raised a legal point of substance of general significance. He did not suggest that delay has caused any particular detriment to the respondent.

[14] The applicant took immediate steps to have the ruling of the resident magistrate reviewed by a superior court albeit by adopting the wrong procedure. In the particular circumstances and in accordance with the principles outlined in *Davis v NI Carriers* we consider that justice requires that an extension of time be granted.

## *The substantive application*

[15] When the resident magistrate granted the application to state a case the applicant's appeal against his decision ceased by operation of Article 146 (8). There is no provision for this right to be revived when the resident magistrate altered his ruling by refusing to state a case. As a result the applicant was left in a lacuna in which he was deprived of his right of appeal against the resident magistrate's decision to the county court and denied the opportunity to seek the opinion of this Court by way of case stated.

[16] Mr Valentine tentatively suggested that the resident magistrate would have been entitled to require the applicant to withdraw his appeal to the county court before acceding to the application for a case stated. If the applicant had been required to do so and the resident magistrate had then declined to state a case the applicant's right of appeal to the county court

against conviction would have been lost, though his appeal against sentence would have survived as the application for a case stated was confined to the question of conviction. Article 146(8) preserves the right of appeal on both grounds until such time as the application for a case to be stated has been granted. We do not accept that an applicant can be required to withdraw his appeal prior to this.

*Conclusion*

[17] The resident magistrate was correct when he granted the application to state a case as his decision concerned a legal point of substance. His subsequent order revoking this decision on the ground that the applicant had appealed against conviction and sentence to the county court was ill founded. Once he granted the application for a case stated the applicant's right of appeal to the county court against his decision ceased.

[18] The time for this application provided for by Order 61 rule 4 is extended to 21 April 2003 and the resident magistrate is directed to state a case for the opinion of this court within a period of 4 weeks.