

Neutral Citation No: [2020] NIQB 2

Ref: KEE11161

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

Delivered: 10/01/2020

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

**IN THE MATTER OF AN APPLICATION BY VINCENT KELLY
FOR LEAVE TO APPLY FOR JUDICIAL REVIEW**

KEEGAN J

[1] I intend to give a short oral ruling in this case at this stage. I heard this application for leave to apply for judicial review on 17 December 2019. On 28 September 2016 the applicant was convicted of possession of a firearm with intent to endanger life and sentenced to 9 years' imprisonment at Antrim Crown Court by His Honour Judge Kerr. This comprised a custodial period of 4½ years in custody and 4½ years on licence pursuant to the provisions of the Criminal Justice (Northern Ireland) Order 2008. The judicial review is directed against the terms of the licence.

[2] The applicant was released in May 2019 on licence and the said licence is due to expire on 23 November 2023. The applicant has previous convictions, one from 1999 when he was 14 for a firearms offence which resulted in a suspended sentence and one in 2016 for membership of the IRA for which he served a period of in and around 4 years. Both cases were heard before the Special Criminal Court in Dublin. This history has been helpfully set out by the applicant in his affidavits.

[3] The judicial review application was stayed by order of McCloskey J on 1 September 2019 on the basis of an alternative remedy canvassed in the pre-action protocol response, namely that the applicant could apply for a resettlement grant to live in the Republic of Ireland. The case returned to court and to my list as the applicant indicated through correspondence that he did not wish to avail of a resettlement grant. Rather he disputed various terms of his licence contained in correspondence of 18 May 2019 and 11 November 2019 which I have read. The current challenge is therefore comprised in an amended Order 53 statement of

23 November 2019. Mr Bassett BL appeared for the applicant in moving the application and Mr McAteer BL for the respondent. I am grateful to both counsel for their assistance.

[4] The basis of the challenge is in relation to seven conditions imposed by virtue of the licence namely:

- (i) additional condition residence at an address;
- (ii) daily signing;
- (iii) no attendance at political meetings;
- (iv) a ban on phone with internet;
- (v) curfew;
- (vi) electronic tagging; and
- (vii) a ban on cross-border travel.

[5] The relevant rules are the Criminal Justice Sentencing Conditions Licence Rules (Northern Ireland) 2009. Rule 2 lists seven standard conditions which may be part of a licence. There are other conditions of licence which may be imposed, governed by Rule 3(2)(8)(i). This case is about the latter category of additional conditions.

[6] The direction of the application is as follows. First, a challenge to condition 2 which is daily reporting on the basis that it is ultra vires. Second, it is argued that conditions 1, 4, 5, 6 and 7 are contrary to Article 8 of the European Convention on Human Rights. Third, there is a third challenge to condition 7 on the basis that it indirectly discriminates contrary to Article 14 of the ECHR and that it is contrary to EU law in restricting freedom of movement within the European Union as the applicant is a citizen of the Republic of Ireland.

[7] Mr Bassett has presented a very detailed written and oral argument on all of these matters which I have considered. In response, Mr McAteer makes the compelling submission, in my view, that there has been no direct engagement by the applicant on most of the issues which are now raised in this judicial review. I do note that the result of engagement has been consideration of requests, specifically travel to the Republic of Ireland which has occurred most recently at Christmas 2019. Mr McAteer intimated that many issues could be clarified or resolved were the applicant to engage with the proposed respondent.

[8] Judicial review is a remedy of last resort and I am concerned that this longstanding principle has perhaps been overlooked in this case. Such a trend, if

there is a trend, is not conducive, in my view, to the smooth running of this supervisory court. It is very obvious to me that in the first instance the applicant should make his case to the proposed respondent regarding specific licence conditions that he requires either clarification of or a change to. Many of the issues may be resolvable and only after that process will the court consider, what if anything requires adjudication, and whether leave should be granted.

[9] Accordingly, the proceedings are stayed. Any future application must be accompanied by a full affidavit setting out the engagement that has taken place. This ruling will be made available for the assistance of the parties and any future court hearing this matter.