

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

IN THE MATTER OF AN APPLICATION BY ROBERT LINTON SCOTT

(Bail: immediate effect)

KEEGAN J

Introduction

[1] This is an application for bail brought by the accused person in circumstances where his licence has been revoked in relation to other previous offences for which he was convicted. Ms Boyd BL appears for the prosecution and Mr Barry Gibson BL for the applicant.

[2] I was asked by counsel to adjudicate on a preliminary matter whether it is appropriate for a bail court to hear an application for bail in circumstances where a licence has been revoked and the applicant has been recalled to prison in relation to other matters. I heard the application and I gave an ex tempore judgment which I now issue in this written format.

Factual background

[3] The applicant comes before this court charged with 6 offences arising out of an incident on 8 April 2016. The offences are possession of a Class A controlled drug, possession of a Class A controlled drug with intent to supply, using a motor vehicle without insurance, being an unaccompanied L driver, having no L plates displayed and encouraging or assisting in offences believing one or more will be committed. These charges arise out of an incident when the applicant was driving a car which was involved in a collision. As a result, police attended at the scene and substances were recovered which are alleged to be the Class A drugs. These were found in the car and in a subsequent search of the applicant's property. The applicant has admitted the driving offences but he disputes the drug offences and there are some further tests to be made in relation to the substances.

[4] This is a second application for High Court bail by this applicant. The sequence is that the applicant was arrested on 8 April 2016 and charged to appear at Belfast Magistrates' Court on 11 April 2016. At that stage bail was refused by the District Judge. On 14 April 2016 a bail application was made at the High Court by the applicant but it was withdrawn given that the licence from the Crown Court conviction had been revoked that day.

[5] This second application in relation to the same charges comes after bail was refused by the District Judge on 26 May 2016. I was told that the applicant has now been served with notice regarding the revocation of his licence. The dossier is due to be made available by 3 June to facilitate written representations being made regarding early release. The applicant submits that the only justification set out for revocation of licence is the new charges as otherwise he was co-operative on licence.

[6] On 9 May 2013 the applicant was convicted at Belfast Crown Court of an offence of robbery which was committed on 1 November 2012. The sentence imposed was one of 6 years 6 months comprising 3 years 3 months custody and 3 years 3 months on licence. The applicant was released on licence in relation to this offence on 2 February 2016.

[7] The issue in this case arises because the applicant's licence was revoked and he was recalled to custody on 12 April 2016. This was as a result of the charges in relation to driving and drug offences which are before this court. The applicant makes the case that when he was on licence he complied with probation and obtained accommodation. He also asserts through Mr Gibson that he is an appropriate candidate for bail.

[8] In relation to revocation of licence and recall it is appropriate to refer to the role of the Parole Commissioners. The Parole Commissioners act as part of the Parole Commission of Northern Ireland which is an independent body that makes decisions on release and on the recall of prisoners such as the applicant. Once a person has been recalled the case is referred to the Parole Commissioners to consider re-release. The primary function of the Parole Commissioners is to have due regard to:

- (a) the need to protect the public from serious harm; and
- (b) have regard to the desirability of:
 - (i) securing the rehabilitation of offenders; and
 - (ii) preventing the commission of further offences.

[9] In determining the issue in this case I have been greatly assisted by two decisions of the High Court in this jurisdiction, namely In the Matter of An Application by BG (applicant for bail) [2012] NIQB 13 which is a decision of

Mr Justice McCloskey and In the matter of an Application by Marion McGlinchey for leave to apply for Judicial Review [2013] NIQB 5 a decision of Mr Justice Stephens.

[10] In the BG case, McCloskey J was faced with a situation where an applicant when charged with an offence, which was murder, was already in custody having been remanded in respect of a series of other unrelated criminal charges i.e. conspiracy with others to rob, entering with intent armed with a knife and possession of a weapon with intent to commit robbery. As McCloskey J observed this had the consequence that in pursuing his application for bail to the Magistrates' Court and in challenging the refusal decision by mounting a further application to the High Court the applicant, come what may in the circumstances of that case, would remain in custody for an indefinite period. In the BG case McCloskey J identified two questions at paragraph 3 namely:

“(a) Is it appropriate in principle for either the Magistrates' Court or the High Court to purport to grant bail to an accused person who, by virtue of his status, will remain in custody for an indefinite period?

(b) As a matter of good practice, is it desirable that the later application for bail should be considered entirely in isolation from a similar application for bail in respect of the earlier charge/s?”

[11] The Judge then recites in detail the power invested in the Magistrates' Court, the Crown Court and High Court to grant bail. I recommend this analysis to practitioners. At paragraph 11 of this judgment the Judge refers to the emphasis of bail as having a 'liberating effect.'

[12] I quote from paragraph 12 of the judgment because McCloskey J having analysed the law and the powers within the various court tiers to grant bail states:

“In my opinion, all of these provisions are founded on the unexpressed premise that where a court grants bail, the accused, in the great majority of cases, is liberated from custody.”

The judge then refers to Article 5 of the European Convention on Human Rights (ECHR) which is relevant to any bail consideration given the provisions of Article 5 dealing with deprivation of liberty.

[13] In the BG case the judge's conclusions are found from paragraphs 14-17 and they bear careful reading. There are a number of points that I draw out and respectfully adopt from that analysis. In paragraph 14 the Learned Judge refers to the fact, in that case, that the continued detention of the applicant in custody was directly attributable to the consideration that he has been lawfully deprived of his

liberty by due process of law in a different context and forum and come what may, will remain detained. He goes on at paragraph 15 to say:

“In the ECHR jurisprudence, it has been held consistently that the grounds upon which bail may be refused include the risks of flight, interference with the course of justice, the commission of further offences or threatening public order. These considerations serve to highlight one of the prominent features of bail judicial decision making, namely the factor of immediacy, or currency. In short, a decision in favour of granting bail in a case where the decision may not have any practical effect for some considerable time is manifestly undesirable as its currency will become gradually eroded and it will become increasingly detached from the material facts and realities.”

At paragraph 16 he says:

“It seems equally undesirable that bail applications of the present fragmented, detached type should be heard and determined in the kind of vacuum which seems to prevail in existing practice.”

At paragraph 17 he says:

“Finally, there is the question of principle discussed above. I consider that, fundamentally, there is an inextricable link between bail and liberty. If effect is given to the adjustment to existing practice this will address the fundamental objection that a 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. It seems to me that the refusal of bail applications of the present kind by any court will not contravene Article 5(3) ECHR, not least because the facility exists for pursuing a fresh subsequent application in altered circumstances.”

[14] In that case McCloskey J dismissed the application for bail and he considered that the application was a paradigm example of an improper invocation of the inherent jurisdiction of the High Court and hence a misuse of the process of the court.

[15] In the second case to which I have referred, the McGlinchey case, Stephens J was dealing with a judicial review application. However, his decision also has an important practical application to bail applications before this court. This was an application whereby the applicant sought leave for a judicial review of a decision of the Northern Ireland Prison Service refusing the applicant temporary release in order to attend her sister's funeral and/or wake. It transpired that by the hearing date the Northern Ireland Prison Service had permitted attendance at the wake but for 1½ hours. The application regarding the funeral was therefore not pursued but the applicant did pursue a case to have a longer period of 4 hours at the wake.

[16] I appreciate that these are different factual circumstances from the case at issue but the Learned Judge makes some comment and reiterates points of principle in the body of his judgment which are pertinent to my consideration. At paragraph 7 he says that he was informed in that case that the Prison Service would not entertain an application for temporary release unless and until bail has been granted by the courts in relation to any outstanding criminal charges. The Learned Judge in that case goes on to state that he considered that practice to be inappropriate both as a matter of principle and also for good practical reasons.

At paragraph 8 he says:

“As a matter of principle I respectfully agree with McCloskey J that in the exercise of discretion a court should not entertain a bail application in circumstances where the grant of bail will not secure the liberty of the applicant. McCloskey J qualified that proposition so that a bail order could be granted if it conferred liberty on the applicant “immediately or in the foreseeable short term”.

[17] The Learned Judge goes on to relate this to compassionate applications but he considers in the factual circumstances of that case that as a matter of principle the onus was first on the Prison Service to deal with the temporary release. Thereafter, if granted it is for the court to consider the grant or refusal of bail. The Learned Judge takes up this theme which is one of sequencing at paragraph 13 of his decision where he says:

“Accordingly, I consider that the correct sequence is that before bail is granted or refused it is first for the Prison Service to deal with and make a decision in respect of an application for temporary release and thereafter, if successful, the applicant can proceed to a hearing for bail before the criminal courts.”

[18] I then turn to the facts of this case. This case involves an applicant on licence which is a different factual scenario to the two decisions I have referred to.

However, it seems to me that there are some common principles. There are three core tenets I apply. Firstly, I adopt the dicta of Stephens J and McCloskey J that in the exercise of discretion a court should not entertain a bail application in circumstances where the grant of bail will not secure the liberty of the applicant in the immediate or short term. Secondly, I consider that sequencing of decision making is important when another body is involved such as the Parole Commissioners who in this case have to determine if a licence should remain revoked. Thirdly, I have to consider whether any course I take is compliant with the ECHR. I do that taking into account that there is a facility to pursue a fresh bail application before the High Court.

[19] Following from the above my conclusion in relation to this case is that I should dismiss this bail application without adjudication on the merits. I do that on the basis of the revocation of licence. I take this course for the following reasons:

- (i) Bail in this case would have no immediate effect and I cannot see the utility of it.
- (ii) The applicant is entitled to a hearing before the Parole Commissioners regarding the revocation of his licence and recall. That is an independent decision making body where full consideration will be given to the circumstances of his case. The decision of that body, in my view, should come first in the sequence. If revocation of the licence is sustained bail for the current offences does not arise. If the Parole Commissioners' decision is to reinstate the applicant's licence he can apply for bail afresh. As such I do not consider that there is any breach of Article 5 of the ECHR.
- (iii) I consider that it is inappropriate to determine bail on the merits whilst the Parole Commissioner adjudications are outstanding. It seems to me that this would be an improper use of the bail jurisdiction to potentially influence the Parole Commissioners one way or another. In other words, adjudication on the merits could potentially prejudice an applicant in making a case to the Parole Commissioners or potentially influence the Parole Commissioners in a certain direction.

[20] This decision relates to circumstances where it is alleged that a breach of licence has occurred however I consider that the principles are relevant in other circumstances which may arise where the grant of bail would not lead to liberty and when another decision making body such as the Parole Commissioners or the Northern Ireland Prison Service has seizure of an applicant's case.

[21] In cases where the licence is not yet revoked but where a consideration of that is imminent, it seems to me that it would be best to adjourn the application pending determination of the licence issue.