

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

THE QUEEN

-v-

MARTIN HEANEY

Before Kerr LCJ, Nicholson LJ and Campbell LJ

KERR LCJ

[1] An application has been made by Mr Brolly, junior counsel for the applicant, for a legal aid certificate in respect of work undertaken by the legal representatives of the applicant in preparation of the application for leave to appeal against the applicant's conviction for murder. He has now abandoned that application.

[2] Mr Brolly submitted that there was considerable merit in the applicant's application for leave to appeal and that he had decided not to proceed with his application because he wished to spare the relatives of his victim the pain and ordeal of a further court hearing. While we do not doubt that Mr Brolly has faithfully relayed to us the instructions that he and Mr Gallagher QC have received, we wish to make it clear that we do not consider ourselves obliged to accept that the applicant was motivated to abandon his application out of concern for the victim's family. We consider that there is ample and obvious reason to question the veracity of that claim.

[3] The application for leave to appeal proceeded on two principal grounds. The first of these was that the applicant's legal representatives at his trial failed to abide his instructions which, it was claimed, were to the effect that the killing of the victim had been the result of an accident. The applicant asserted that he did not wish to - nor was he in a position to - make a case of self defence. Despite this, he claimed, his counsel mounted a defence based exclusively or virtually exclusively on this ground. The contemporaneous

notes of consultations with the applicant prepared by his former solicitors give the emphatic lie to those claims. It is clear from those notes 1. that the applicant told his legal representatives that the infliction of the fatal wound was quite deliberate; and 2. that the defence of self defence was discussed and explained to the applicant and he espoused it willingly. The material available to this court on this issue points clearly to the conclusion that this aspect of the appeal was utterly devoid of merit.

[4] Mr Brolly suggested that the applicant gave a consistent version of the killing in evidence to the effect that it had occurred as a result of an accident. He took us to various sections of the transcript in an effort to make good that claim. So far from doing so, however, the transcript references indicated clearly that the applicant professed to be unable to explain how the victim came to be stabbed. I am afraid that our consideration of the transcript to which Mr Brolly referred merely served to reinforce our conviction that the applicant's case on this aspect of his application was entirely without substance or foundation.

[5] The second principal ground of appeal related to the absence of any reference in the judge's charge to the possibility that the death of the victim was the result of an accident. Since the application for leave to appeal has not proceeded we are not in a position to reach a concluded view as to the strength (or lack of it) of this argument. It is perhaps worthy of observation, however, that the absence of any reference to this matter is hardly surprising in light of the way in which the defence case was presented.

[6] The issue for us now is whether we should accede to an application that the legal representation that the applicant has received to date in respect of what appears to be a worthless appeal should be paid for from public funds. Mr Brolly has told us that a great deal of work was undertaken by the applicant's new legal team and I do not doubt that this is so. But it should be clearly understood that the industry of legal representatives will not warrant the grant of legal aid for an application for leave to appeal which should not have been made.

[7] It is well known that the public funds available for legal aid are not limitless. This court, in common with other courts whose duty it is to certify that legal aid should be made available, has a duty to ensure that those cases that are without merit are not publicly funded. One of course has sympathy with counsel and solicitors who expend considerable efforts in the preparation of cases for which, ultimately, no payment will be made but it would be quite wrong to certify for legal aid in cases where the appeal is futile.

[8] We wish to make it clear, therefore, that the grant of legal aid in unsuccessful applications for leave to appeal against conviction can no longer

be regarded as automatic. Where such an application is abandoned, as a general rule, legal aid will not be certified unless it can be demonstrated that there are exceptional circumstances justifying this course. Since we have not previously had the opportunity to make this clear, we will, not without considerable hesitation, certify for legal aid in this case but we hope that today's guidance will be considered carefully by practitioners in this court for the future.